

**Breaking the conjugal vows:
marriage and marriage breakdown
in the north of England, 1660-1800.**

Joanne Bailey

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ABSTRACT

This holistic consideration of marriage begins by outlining the range of solutions offered to spouses who suffered from marital conflict. The records produced by the public fora of domestic disputes, that is ecclesiastical and quarter sessions courts, and newspapers, are then explored. Despite their problems of interpretation, it is possible to reconstruct, from complaints made in them, what was considered acceptable and unacceptable behaviour within marriage. The methodology adopted reveals the symbiotic relationship between conjugality, the household and the domestic economy. It also shows how a wider examination of marital conflict confounds stereotypical ideas about power relationships in the household and the sexual double-standard, shedding a new light upon popular attitudes to violence and infidelity, upon personal reputation and attitudes towards property. To recognise the subtleties of gender in practice, cut across as it was by economics and life-circumstances, is not to deny its force as an ideology. Thus the changes in attitudes to cruelty and adultery, which took place between 1660 and 1800, are examined in a context of shifts in the construction of gender. Finally, in order to counter-balance existing work on desertion, which is biased because its subject is generally poorer men who left their families, the experience of wholly divided couples is considered.

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Contents

List of Tables.....	v
List of Abbreviations.....	vii
Chapter 1. 'the Marriage Chain': Introduction	1
Chapter 2. 'their tempers did not agree': the private and public fora of domestic disputes.....	18
Chapter 3. 'Conjugal Complaints': marriages in crisis	42
Chapter 4. 'Matrimonial Government': the politics of gender	58
Chapter 5. 'Mutual fidelity to the marriage bed': adultery	85
Chapter 6. 'depravity increases, and virtue loses its force': changing attitudes to adultery and cruelty.....	111
Chapter 7. 'the Matrimonial Yoke': the economics of marriage	138
Chapter 8. 'which Perverseness in her': attitudes to ownership within marriage.	165
Chapter 9. 'Cannot agree to live together': divorced from the domestic economy	184
Chapter 10. 'is not a state of continual war to be avoided': conclusion	215
Appendix List of ecclesiastical cruelty, adultery and restitution court causes ..	232
Bibliography.....	240

List of Tables

Table 1	Occupation and status of husbands who came before the ecclesiastical courts of York and Durham in instance causes, 1660 to 1800.....	10
Table 2	Occupation and/or status of husbands who came before the courts of quarter sessions, 1660 to 1800.....	11
Table 3	The number of types of matrimonial dispute dealt with by justices of the peace out of session.....	25
Table 4	Breakdown of cases relating to marital problems dealt with by the courts of quarter sessions, 1660 to 1800	29
Table 5	Breakdown of ecclesiastical causes relating to marital problems heard at York and Durham ecclesiastical courts, 1660-1800.....	32
Table 6	Number of types of advert involving marriage placed in the Newcastle and York newspapers between 1711 and 1800.	39
Table 7	Breakdown of initiator of instance cases relating to marital problems brought to the York and Durham ecclesiastical courts in the period 1660-1800	52
Table 8	Breakdown of initiator of complaints relating to marital problems to single justices, covering the period 1730 to 1776	53
Table 9	Breakdown of initiator of cases relating to marital problems that came before the North Riding, Northumberland, Newcastle and Durham courts of quarter sessions, 1660-1800.....	53
Table 10	Complaints made by both spouses about marriage in 94 cruelty and adultery separation suits and restitution suits at Durham and York ecclesiastical courts (not including the primary allegation of male violence or female adultery).....	56
Table 11	Degree of violence described in Libels at York and Durham ecclesiastical courts.....	122
Table 12	Number of incidences of wife-beating at the courts of quarter sessions in the North Riding of Yorkshire, Northumberland, Durham and Newcastle, per 20 years.....	123
Table 13	Instance causes in York and Durham ecclesiastical courts where one or both partners were widowed at marriage.	166

No part of the material offered has previously been submitted by me for a degree in this or any other University.

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List of Abbreviations

BI	Borthwick Institute of Historical Research, York.
C.P.	Cause Paper.
<i>Dangers</i>	Laura Gowing, <i>Domestic Dangers: Women, Words, and Sex in Early Modern London</i> , (Oxford, Clarendon Press, 1996).
D/C	Dean and Chapter.
DRO	Durham Record Office, County Hall, Durham.
DDR	Durham Diocesan Records, Palace Green, University of Durham Library, Archives and Special Collections.
<i>Divorce</i>	Lawrence Stone, <i>Road to Divorce, England 1530 -1987</i> , 2nd edn, (Oxford, Oxford University Press, 1990).
DPR	Durham Probate Records, Palace Green, University of Durham Library, Archives and Special Collections.
<i>GM</i>	<i>The Gentleman's Magazine</i>
NRO	Northumberland Record Office, Morpeth, Northumberland.
NYCRO	North Yorkshire County Record Office, Northallerton, North Yorkshire. (referencing system varies. Where no page of film number is available, the microfilm reel (MIC) number is supplied.)
Trans.C.P.	Transmitted Cause Paper.
TWAS	Tyne & Wear Archive Service, Newcastle.

References to matrimonial suits in the ecclesiastical courts indicate archive, name of plaintiff and defendant, and date. For more details and specific cause paper references, see Appendix. Other types of case are referred to in the text with their appropriate cause paper reference.

The year is taken to begin on 1 January for all court records.

CHAPTER ONE

'the Marriage Chain': Introduction

'Matrimony ought to be considered as the most important step a man can take in private life, as it is that upon which his fortune, his credit and his peace must depend.'²

I

A fountain of soothing balm or a hotspring of coruscating bile? The potential of marriage to be one or the other, and often both at different times in the same union, was well understood in the long eighteenth-century. Contemporaries recorded the inevitability of matrimonial discord in several styles depending upon the prevailing fashion in print, including pragmatically, cynically, satirically, comically, sentimentally and sanctimoniously. The *Book of Homilies*' observation that 'few Matrimonies there bee without chidings, brawlings, tauntings, repentings, bitter cursings, and fightings', was still being read in the late seventeenth-century.³ In 1768 the author of an essay on marriage in *The Newcastle Chronicle* asked: '[h]ow many husbands and wives do we see, who, after being married a twelvemonth, have nothing in common, but their name, their quality, their peevishness, and their misery'.⁴ Quarrels were sometimes represented as the precursors of excessive and dangerous reactions. One young officer's wife in 1751, according to *The Newcastle Courant*, drank a glass of laudanum and died declaiming, 'Duty! and Obedience! and this shall end all Disputes', because her husband was peeved by her not coming down to dinner on time.⁵

¹ *The Newcastle Courant*, 30 July 1743, p. 1. In this poem a husband was burying his wife when the coffin was dropped. The bump brought her to life and as a result he spent another ten years hugging the marriage chain and his hated wife. When she 'again' died, her coffin was taken very quietly and carefully to the grave!

² *The Matrimonial Preceptor. A collection of examples and precepts relating to the married state, from the most celebrated writers ancient and modern* (London, 1755), p. 221.

³ *Book of Homilies, The second Tome of Homilies, of such matters As were Promised and Entituled in the former part of Homilies* (London, 1633), p. 240. Bought by Winston Church, County Durham in 1677. DRO, EP/Wi 72,

⁴ *The Newcastle Chronicle*, 3 September 1768, p. 3.

⁵ *Newcastle Courant*, 5-12 October 1751, p. 2. Also *The Newcastle Journal*, 1-8 December 1764, p. 1.



Marital misery was the inspiration for many of the poems and epigrams in *The Gentleman's Magazine*. In 1731, the twists and turns of a dance provided the metaphor:

This Dance foretells that Couple's Life
Who mean to dance as man and wife;
As here they'll first with Vigour set,
Give Hands and turn whene'er they meet;
But soon will quit their former Track,
Cast off, and end in back to Back.⁶

Twelve years later, an 'Epigram on Matrimony' discarded any claim to sophistication:

Tom prais'd his friend (who chang'd his state)
For binding fast himself and *Kate*
In union so divine;
Wedlock's the end of life he cry'd,
Too true alas! said *Jack*, and sigh'd -
- 'Twill be the end of mine.⁷

A manorial custom that offered a prize of bacon to any couple who had not argued during their marriage was funny fodder for the provincial press. *The Newcastle Gazette* wise-cracked in 1751 that an Essex couple, who had recently made a claim for the prize, were the only ones to do so since 1701.⁸ More often, a note of resignation crept in. A writer of female advice commented in 1730 on, '*Discord* which usually treads upon the Heels of Matrimony'; fifty-five years later *The York Chronicle* caustically defined matrimony as 'that which precedes a divorce'.⁹

Unfortunately, divorce was no escape from matrimonial discord in this period. As we shall see, couples could separate informally. Some mutually agreed and perhaps semi-formalised the split with a legal document drawn up by an attorney.¹⁰ Others took a unilateral decision to leave their spouse, with no formalisation of the event.¹¹ But full

⁶ *GM*, November 1731, vol. 1, p. 495.

⁷ *GM*, April 1743, vol. 13, p. 212, 'Epigram on Matrimony'.

⁸ *The Newcastle Gazette*, 3 July 1751, p. 2. Also poem in *Newcastle Chronicle*, 14 July 1764, p. 4.

⁹ Francois Bruys, *The Art of Knowing Women: or, the Female Sex Dissected, in a faithful representation of their virtues and vices, written in French by the Chevalier Plante-amour, published at the Hague, 1729. Now faithfully made English with improvements* (London, 1730), p. 73. *The York Chronicle*, 15 July 1785, p. 1.

¹⁰ See chapter two, p. 33.

¹¹ See chapter nine, pp. 191-4.

divorce with the right to re-marry was restricted before 1857 to the few men who could organise and afford a private act of parliament.¹² For most of the population, legal re-marriage, while the first spouse was alive, was restricted to those whose marriages were void and who therefore obtained an annulment in the ecclesiastical courts. They too were in a nano-minority, since the grounds available to dissolve marriage, including spousal frigidity or impotency, were difficult to prove. More easily proven was when one spouse was pre-contracted or bigamous, when the couple were married within prohibited degrees, or when one or both spouses were minors at the ceremony. Slightly more 'user-friendly' was separation from bed and board, on the grounds of either adultery or cruelty, obtainable from the ecclesiastical courts. Nevertheless it only permitted spouses to legally live apart, not to re-marry. The other legal device available from ecclesiastical courts to alienated spouses was restitution of conjugal rights. It was hardly conducive to escape from conflict, since it had the potential to force the defendant to allow the plaintiff back into the marital home, or to return to the plaintiff.¹³

II

It is important to systematically analyse conjugal strife, given its centrality to seventeenth- and eighteenth-century culture.¹⁴ Of course, research into marriage is hardly uncommon. But, within the existing historiography individual works focus either on marriage or on marriage breakdown. The former is an obligatory section in most social histories of the early modern period.¹⁵ Understandably so; marriage was an

¹² Parliamentary divorce was only available on the grounds of adultery. Between 1670 and 1857 there were 325 such divorces in England. Roderick Phillips, *Untying the knot. A short history of divorce* (Cambridge, 1991), p. 65. Also see Stuart Anderson, 'Legislative Divorce - Law for the Aristocracy' in G.R. Rubin, David Sugarman (eds.), *Law Economy & Society, 1750-1914: Essays in the History of English Law* (Abingdon, 1984), pp. 412-45; S. Wolfram, 'Divorce in England 1700-1857', *Oxford Journal of Legal Studies*, 5, 2 (1985), 155-86.

¹³ *Divorce*, pp. 191-5. In practice, restitution was often used to resolve maintenance problems.

¹⁴ There are some valuable case studies. Keith Wrightson, *English Society 1580-1680* (London, 1982), pp. 92-104; Anthony Fletcher, *Gender, Sex and Subordination 1500-1800* (London, 1995), pp. 173-91. For the significance of familial conflict see Linda Pollock, 'Rethinking Patriarchy and the Family in Seventeenth-Century England', *Journal of Family History*, 23, 1 (1998), 20; Margaret Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (London, 1996), p. 8.

¹⁵ For example, Wrightson, *English Society*, pp. 66-104; Ralph A. Houlbrooke, *The English Family 1450-1700* (Harlow, 1984), pp. 63-126.

experience that crossed social, sexual and age boundaries and, in this period, at least 85% of those reaching adulthood married.¹⁶ The ceremony marked adulthood and bestowed a number of privileges, with men and woman each gaining new status as householder and housekeeper.¹⁷ The terms of reference for the analysis, however, are usually restricted to whether marriage was companionate and/or patriarchal, in the wake of Lawrence Stone's work on marital relationships that was published over twenty years ago.¹⁸

Historians describe patriarchy, in terms of the relationship between spouses, in three general ways. The most contentious proposes that patriarchy declined, allowing relationships to become more companionate by the later eighteenth-century.¹⁹ The second model contends that it was [is?] an adaptable system, consistently refiguring to fit the needs of men when cultural changes necessitate.²⁰ Whereas the latter is useful in terms of wider cultural overviews, it is difficult to show whether these shifts in the articulation of gender affected everyday marital relationships. The third model (which does not exclude the validity of the second) attempts to resolve the problem of co-existing examples of unions that were either extremely patriarchal or extremely companionate, by suggesting that they were simply two poles on the continuum of marriage.²¹ While not ruling out patriarchy's harsh potential, this theory assumes that it

¹⁶ Probable proportion never marrying in the cohort born in the 1680s was around 16%, but about 4-7% in cohorts born in the 1730s and 1740s. In cohorts born in the 1780s the proportion rose, and reached 10-12% by the nineteenth-century. E. A. Wrigley & R. S. Schofield, *The Population History of England 1541-1871* (London, 1981), pp. 263-5.

¹⁷ David Cressy, *Birth, Marriage, and Death: Ritual, Religion and the Life-Cycle in Tudor and Stuart England* (Oxford, 1997), p. 287; R. B. Outhwaite, *Clandestine Marriage in England, 1500-1850* (London, 1995), p. xv.

¹⁸ Stone, *The Family, Sex and Marriage In England 1500 - 1800*, abridged edn (London, 1977).

¹⁹ Stone, *Family, Sex and Marriage*, Part 4, 'The Closed Domesticated Nuclear Family'.

²⁰ Fletcher, *Gender*, p. 411.

²¹ Wrightson, *English Society*, p. 104; A. J. Hammerton, *Cruelty and Companionship, Conflict in nineteenth-century married life*, (London, 1992), p. 169.

was alleviated by other factors. One was affection, which implies, therefore, different behaviour in public and private.²² Another was the structure of the domestic economy.²³

On the other hand, general studies about marital breakdown provide an exposition of the workings of separation or divorce.²⁴ They simply define the walls of the matrimonial prison, noting the exclusivity and rarity of divorce and judicial separation. Consequently, their insights into the marital relationship are often generalised, shaped more by legal theory than marital practice. Finally, blinkered studies of specific elements of marital breakdown offer partial glimpses of marriage. This is because their intention is to use the records to gain other information, such as attitudes to personal reputation, or the social and cultural meaning of violence.²⁵ The, admittedly unintended, cumulative effect of these fragmentary studies is a pernicious generalisation of the married state.

Generalisation is tipped into stereotype when the weight of studies about illicit sexuality is added. They argue that since female chastity was paramount, women's sexuality was restricted within marriage, while men were permitted much greater freedom without affecting their reputation. The studies invariably conclude that this sexual double-standard cast an oppressive shadow over women, so that their sexuality formed their

²² Wrightson, *English Society*, pp. 92.

²³ Linda Gordon sees marriage in nineteenth- and twentieth-century America as 'co-operation among unequals', observing that the linking of economic futures made spouses' interests complementary as much as adversarial. Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence, Boston 1880-1960* (New York, 1998), p. 288.

²⁴ For example, *Divorce*; Phillips, *Untying the knot*; Leah Leneman, "'Disregarding the Matrimonial Vows": Divorce in Eighteenth and Early Nineteenth-Century Scotland', *Journal of Social History*, 30, 2 (1996), 465-82.

²⁵ For example, Elizabeth Foyster, 'Male Honour, Social Control and Wife Beating in Late Stuart England', *Transactions of the Royal Historical Society*, Sixth Series, VI (1996), 215-24; Susan D. Amussen, "'Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England', *Journal of Women's History*, 6, 2 (1994), 70-89; Anna Clark, 'Humanity or Justice? Wifebeating and the law in the eighteenth and nineteenth centuries' in Carol Smart (ed.), *Representing Womanhood: Historical Writings on Marriage, Motherhood and Sexuality* (London, 1992), 187-206.

very self-identity, whereas men bathed in the sunshine of permissiveness.²⁶ The reader of these secondary sources is faced with an anomaly. For the married women depicted in studies of marriage breakdown are irreconcilable with those who feature in work by Amy Erickson, Margot Finn, Olwen Hufton, Amanda Vickery, and Garthine Walker. Their research reveals that women of different social status were active agents in their own lives and that their self-identities were not nailed to the wall of chastity.²⁷

Moreover, once nuance, qualification and chronological sensitivity are jettisoned, the result is frequently an all-purpose vision of marriage, self-identity and personal reputation. This grotesque caricature is anachronistically applied to conjugal relationships from the sixteenth- to the nineteenth-centuries, and indiscriminately to all parts of the country and all social ranks, as can be seen from the opening of a review of Laura Gowing's book *Domestic Dangers: Women, Words, and Sex in Early Modern London*:

In early modern England, women, not men, represented danger to marriage, domestic tranquillity and the ideal household. Since a woman's honour and reputation were tied to her sexual behaviour, misbehaviour or even accusations of misbehaviour were serious threats to the household. Adultery, with which only women were charged, could end a marriage. While marriage played a central role in defining a woman's identity, a man's identity and his reputation were based on many other factors.²⁸

²⁶ *Dangers*, pp. 3-4; Fletcher, *Gender*, p. 105.

²⁷ A. L. Erickson, *Women & Property in Early Modern England* (London and New York, 1993); M. Finn, 'Women, Consumption and Coverture in England, c 1760-1860', *The Historical Journal*, 39, 3 (1996), 702-22; O. Hufton, *The Prospect Before Her: A History of Women in Western Europe, 1500-1800* (London, 1995); A. Vickery, *The Gentleman's Daughter: Women's Lives in Georgian England* (New Haven & London, 1998); G. Walker, 'Expanding the boundaries of female honour in early modern England', *Transactions of the Royal Historical Society*, Sixth Series, VI (1996) 235-45. For the Elizabethan period, see Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998).

²⁸ Steven Smith, *Journal of Social History*, 31,4 (1998), 954-5.

III

For all its shortcomings, this cartoon-like image of marital relationships is based upon research in late sixteenth- and early seventeenth-century archives. There is little comparative work on late seventeenth- and eighteenth-century marriage, which considers either regional variations or the experiences of different sections within the population. This is all the more surprising considering the emphasis placed by historians on important changes to gender relationships within patriarchy in the long eighteenth-century.

This thesis aims to redress the balance. It is rooted in one of the standard resources for those who study early-modern society: a collection of 185 matrimonial suits that were heard by the various York and Durham ecclesiastical courts.²⁹ There is indeed much to learn from these fascinating sources. Although valuable studies of marriage based on correspondence and diaries exist, such personal records are rare and problematic, since in this period they were still predominantly produced by the elite and/or by men.³⁰ Court records, as often recognised, provide some insight into the attitudes and beliefs of a wider section of society and of both sexes.³¹

Since the general use of the ecclesiastical courts declined over the period studied, they give little indication of the changing rates of marital breakdown, but the plethora of detail in many of the matrimonial cause papers casts a spotlight on marital expectations.³² It is, nonetheless, dangerous to take the apparent first person narrative of these cause papers at face value and unproblematically read the structure of a

²⁹ Derived from sampled cases in BI and DDR matrimonial and office cases. See Appendix for fuller details of sampling.

³⁰ Vickery, *The Gentleman's Daughter*, pp. 154-91.

³¹ For women gaining a voice through law, see *Dangers*, pp. 234-5; court records as an insight into the rural middling-sort, see J. A. Sharpe, 'Defamation and Sexual Slander in Early Modern England: The Church Courts at York', *Borthwick Papers*, 58, pp. 17-18; insights into the poor via their petitions, see Thomas Sokoll, 'Old Age in Poverty: The Record of Essex Pauper Letters, 1780-1834' in Tim Hitchcock, Peter King and Pamela Sharpe (eds.), *Chronicling Poverty: The Voices and Strategies of the English Poor, 1640-1840* (London & New York, 1997), p. 135.

³² See Christopher Brooks, *Lawyers, Litigants and English Society since 1450* (London, 1998), pp. 71-2.

community, gender relations, and reputation out of them. The aims of the disputants must be considered in the context of the legal procedure and the requirements of evidence. Ignoring this, in the case of marriage, can lead to dangerous assumptions. For example, a whole world of gender difference has been read out of the sex-division of adultery and cruelty cases, where the former were largely pleaded by men and the latter by women. In it the sexes experienced matrimony and personal reputation in wholly different ways.³³

In order to deal with some of these problems, and to test the values expressed in the church court records against those of individuals from a wider social and geographical range, newspapers and quarter sessions court records have also been examined. Mutual separations, elopements, desertions, and failing marriages were consistently advertised in provincial newspapers. In spite of this, almost no work has been done on this phenomenon.³⁴ Approximately 288 advertisements, involving 214 separate couples, were collected from twelve weekly Newcastle and York newspaper titles.³⁵ At the same time, the quarter sessions' judicial and administrative arms offered valuable assistance to wives suffering from marital difficulties, primarily physical abuse and desertion. While their ad-hoc record keeping makes it difficult to trace, troubled couples also came before justices of the peace working outside quarter sessions courts.³⁶ Formal quarter sessions court records are more comprehensive, and 337 cases relating to marital problems were assembled from the quarter sessions' order books and bundles for the

³³ See chapter three, 51-7.

³⁴ To my knowledge, the only other work that deals with this evidence is Herman R. Lantz, *Marital Incompatibility and Social Change in Early America* (Beverly Hills, London, 1976). He examined 95,679 issues of eighteenth-century newspapers from each state and territory in the southern colonies and found 3,348 advertisements. He estimated that if he had been able to examine every newspaper published, then this figure would be 7,504.

³⁵ Every fifth year was examined from 1711 to 1800, as far as the runs allowed. In all, 83 individual years were examined. *The Newcastle Gazette*, 1710-1712; *The Newcastle Courant*, 1711-1800; *The Newcastle Weekly Mercury*, 1722-1723; *The North Country Journal or Impartial Intelligencer*, 1734-1738; *The Newcastle Chronicle or General Weekly Advertiser*, 1764-1800; *The Newcastle Advertiser*, 1788-1800; *The Newcastle Gazette*, 1744-1752; *The Newcastle Intelligencer*, 1755-1759; *The Newcastle Journal*, 1739-1788. *The York Chronicle and General Advertiser*, 1773-1800; *The York Courant*, 1728-1800; *The York Herald and County Advertiser*, 1790-1800.

³⁶ See chapter two, p. 24.

North Riding of Yorkshire, the boroughs of Scarborough and Richmond, County Durham, the borough of Newcastle, and the county of Northumberland.

These sources correct the bias of the church courts towards the gentry and the better-off middling-sort. Over one-third of the couples who came before York and Durham ecclesiastical courts were from the elite of society (see Table 1).³⁷ In contrast, only 2% of the husbands at the quarter sessions (see Table 2), and 6% of the advertising husbands were gentlemen.³⁸ More than 74% of the former were lower middling-sort, and approximately 80% of the latter were middling-sort men with only a minority of professionals, namely two surgeons, a cleric, a schoolteacher and an apothecary. In both cases the bulk were craftsmen and tradesmen (including carpenters, cordwainers, plumbers and tailors), retailers (butchers, innkeepers, shop-owners) and some yeomen, farmers and husbandmen.³⁹ The other two-thirds of husbands dealt with by the church courts, however, were drawn from the more financially secure ranks of the middling-sort, with over one-quarter professionals and the rest relatively high-status tradesmen, craftsmen, retailers, and innkeepers.⁴⁰ Whereas only six were below middling-sort, a large minority of the husbands who caught the attention of the quarter sessions and advertising husbands were wage labourers (18.4% of the former, 13% of the latter).⁴¹

³⁷ The rank or occupation of ninety-five (of 105) of the husbands who appeared in separation, annulment and restitution suits was stated and this was used as a rough indicator of social status. Fourteenth-century York church courts were used predominantly by high status litigants. Frederik Pederson, 'Demography in the archives: social and geographical factors in fourteenth-century York cause paper marriage litigation', *Continuity and Change*, 10, 3 (1995), 412-6. Slander litigants were probably lower status. See Sharpe, 'Defamation', pp. 17-18.

³⁸ The status or occupation of 152 of the husbands who came before the quarter sessions courts is known. Occupation was given for 101 of the advertising husbands.

³⁹ A study of advertisers in Yorkshire concludes that professionals, shopkeepers and artisans serving the middling-sort and gentry were most likely to advertise. John Jefferson Looney, 'Advertising and Society in England, 1720-1820: A Statistical Analysis of Yorkshire Newspaper Advertisements' (Princeton University, PhD thesis, 1983) p. 156.

⁴⁰ I have applied Jonathan Barry's definition that the middling-sort were those who worked for their income using a skill and engaging in a trade or profession. J. Barry and C. Brooks (eds.), *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (London, 1994), p. 17. Paul Langford uses £40 or £50 per annum as badges of inclusion in the middling-sort during the eighteenth-century. Langford, *A Polite and Commercial People: England 1727-1783*, 2nd edn (Oxford, 1989), pp 62-63.

⁴¹ Includes 'labourer', servant, as well as keelman, a gardener, and a waggoner. Most of the port- or sea-related workers, as well as soldiers or militiamen, have been categorised as below the middling-sort since their work was often seasonal.

Furthermore, a significant number of the 'unknown' occupations from the quarter sessions were poor people, since eighty-four of the 185 unknowns refer to desertions.

Table 1: Occupation and status of husbands who came before the ecclesiastical courts of York and Durham in instance causes, 1660 to 1800.⁴²

	<i>Cruelty</i>	<i>Adultery</i>	<i>Restitut.</i>	<i>Nullity</i>	<i>Total</i>
Titled/Gent./Esquire ^(a)	15	9	5	3	32
Professional	5	6	4	-	15
Trades/Craftsmen, maritime, retailers	7	4	7	1	19
Soldiers, artisans	-	-	1	1	2
Land worth over £40 p.a. ^(b)	13	1	1	1	16
Land worth £20 to £40 p.a. ^(c)	4	-	-	1	5
Yeomen, farmers, husbandmen	2	-	-	1	3
Poor	-	-	1	-	1
Unknown	1	3	5	3	12
<i>Total</i>	47	23	24	11	105

(a) Includes one man whose status was not specified, but had land worth over £500 p.a.

(b) Problematically, some of the men's incomes could have been over-estimated; if wives inflated their husband's income in order to get the best alimony. Balancing this, however, some men may have been under-estimating and hiding income.

(c) Those who had land worth £40 p.a. and under have been categorised as below middling-sort. It is assumed that this was their only income, since no other was stated.

⁴² Derived from sampled cases in BI and DDR matrimonial cases.

Table 2: Occupation and/or status of husbands who came before the courts of quarter sessions, 1660 to 1800.⁴³

	<i>Cruelty</i>	<i>Desertion</i>	<i>Misc.</i>	<i>Possible</i>	<i>Total</i>
Gentleman	2	1	-	-	3
Professional	3	-	-	-	3
Trades/Craftsmen, maritime, retailers	44	11	15	-	70
Soldiers, militiamen	1	6	1	-	8
Land worth over £40 p.a.	1	1	-	-	2
Yeoman	22	2	1	-	25
Farmer	5	2	1	-	8
Husbandman	4	1	-	-	5
Labourer	9	9	-	-	18
Servant	-	-	2	-	2
Vagrant	1	5	2	-	8
Unknown	61	84	36	4	185
<i>Total</i>	153	122	58	4	337

The ecclesiastical courts were also geographically exclusive. As Frederik Pederson concludes about the church courts in medieval York, those who lived near a main road, which led to a town where a court convened, were more likely to litigate than those with poorer access.⁴⁴ By the eighteenth-century, a high number of York litigants came from the City of York and the larger towns of the North Riding. A significant minority came from the expanding industrial areas of the West Riding, including Leeds and even Saddleworth.⁴⁵ Perhaps their higher levels of wealth allowed them to travel further.⁴⁶

A combination of sources, however, widens the geographic scope. In a similar fashion to the church courts, those who came before the quarter sessions were mainly from the towns where the sessions were held, or were concentrated in areas that had reasonable

⁴³ Derived from all references to marital problems in: NYCRO QSB/1685-1800, QSM/1703-1800, DC/SCB VI 2/1/1/1-4 and DC/RMB III 3/1/3; DRO Q/S/OB 5-16; TWAS QS/NC/1/2-8; NRO QSB 1-87 and QSO 1-15.

⁴⁴ Pederson, 'Demography', pp. 410-1.

⁴⁵ Users of Durham Ecclesiastical Courts followed the same pattern. Interestingly, users of the Durham Chancery Court were from similar areas. Marcus Knight, 'Litigants and Litigation in the Seventeenth Century Palatinate of Durham', (University of Cambridge, PhD Thesis, 1990), pp. 122, 127-33.

⁴⁶ Some litigants were prepared to take their litigation to its extreme, regardless of distance, for included in the causes from the church courts at York are forty suits transmitted from Chester, Carlisle, Durham and Man and the archdeaconries of Nottinghamshire, Northumberland and Richmond.

routes to sessions' towns.⁴⁷ But since the courts were relatively peripatetic, meeting in boroughs and smaller market towns, the study includes couples from areas of the region that are not represented by users of the ecclesiastical courts. For instance, whereas users of Durham church courts came from the more populous eastern side of the county, as well as some of the main towns in Northumberland and the city of Newcastle, those who attended various Northumberland sessions came from smaller towns. These included those along the northern coastal routes and in the south of the region, along the main lines of communication to Hexham, and even Haltwhistle in the west. The same pattern in the North Riding of Yorkshire catches spouses who came from market towns, or villages close to them. Advertising husbands were mostly from the region's more highly populated areas. But again, the newspapers represent couples from other areas, for instance, those who used the York newspapers also lived in the East Riding.⁴⁸

IV

The choice of sources was directed by their unexploited nature, state of survival and accessibility. Nonetheless, a study of the three counties of Northumberland, Durham and Yorkshire is hardly limiting, since, as various historians show, the northeast of England was an area of significant variation.⁴⁹ Crucially, it contained a wide spread of rural, urban and industrialising areas which are reflected in the occupations of the men discussed above. Topographically, the counties are similar in that they all include harsh upland areas, with more populous fertile valleys and long coastal regions. Northumberland is low and flat near the coast, hilly in the centre, and mountainous

⁴⁷ Obviously, those who used the borough of Newcastle's quarter sessions came from the city, and occasionally Gateshead. Durham quarter sessions' users were predominantly from the eastern most populous areas. Users who lived furthest from Durham City came from medium size towns, such as Barnard Castle and Staindrop in the southwest.

⁴⁸ The West Riding was not represented since advertisers had the Leeds press which covered their area.

⁴⁹ Historians rarely categorise the counties in the same way. Durham, Northumberland and the three ridings of Yorkshire have been classified as the north-east of the 'Highland' area of England, Richard Adair, *Courtship, Illegitimacy and Marriage in early modern England* (Manchester, 1996), p. 51. Another study makes Northumberland and Durham a different cultural province from the three ridings, C. Phythian-Adams (ed.), *Societies, Cultures and Kinship, 1580-1850* (Leicester, 1993), pp. 10-11. Others are struck by the similarities of the northern counties with Scotland, G. Morgan and P. Rushton, *Rogues, Thieves and the Rule of Law. The problem of law enforcement in north-east England, 1718-1800* (London, 1998), pp. 9-26.

towards the west. Most of the population was in the southeast and southwest corners, near the coalfield, as well as in the seaports.⁵⁰ County Durham is divided into two; the more populous lowland areas in the east and the less inhabited western upland areas.⁵¹ The North Riding consists of the Pennine hills in the west and the North York Moors in the east. Settlement was concentrated in the rich vale of York that divided the two areas of moorland and in the areas circling the North York Moors to the north and south.⁵²

The diversity of the region is due to the fact that in this period the north of England was both agricultural and undergoing early and extensive industrialisation. Northumberland in the later seventeenth-century was still a poor area, the legacy of its position as a border area between England and Scotland.⁵³ While mostly agricultural, by the eighteenth-century it contained industrial areas in the south such as North Shields.⁵⁴ Also with pastoral and arable farming, parts of County Durham were, thanks mainly to coal, highly industrialised.⁵⁵ Other industries, such as shipbuilding, the salt trade, iron foundries, potteries, glass making and textiles were increasingly important during the period.⁵⁶ The coalfield also had an impact on agriculture, providing bigger markets, and therefore more intensive production and specialisation.⁵⁷ Durham City, of course, was the legal centre of the Palatinate.⁵⁸ The primary urban area of the region, however, was Newcastle, a borough, which ranked as one of the major provincial capitals of pre-

⁵⁰ Cadwallader J. Bates, *The History of Northumberland*, (London, 1895), pp. 4-11; William Weaver Tomlinson, *Comprehensive Guide to the County of Northumberland* (Newcastle), p. v.

⁵¹ Knight, 'Litigants', p. 26.

⁵² Malcolm Barker, *Yorkshire: The North Riding* (London, 1977), p. 13; J. S. Cockburn, 'The Work of the North Riding Quarter Sessions in the Early Eighteenth Century', (University of Leeds, Master of Law, 1961), pp. 4-5.

⁵³ It had also suffered following Parliament's victory. Edward Hughes, *North Country Life in the Eighteenth Century, The North-East, 1700-1750* (London, 1952), p. xvi. While there were troubles during the 1715 Jacobite Rebellion, the county was not particularly affected by the 1745 rising. Bates, *History of Northumberland*, pp. 257-63.

⁵⁴ Richard Simpson, *North Shields and Tynemouth* (Surrey, 1988), pp. 2-5.

⁵⁵ For a case study of a parish in the Durham coalfield, see D. Levine and K. Wrightson, *The Making of an Industrial Society, Whickham 1560-1765* (Oxford, 1991).

⁵⁶ William Page, (ed.), *The Victoria County History of the Counties of England, A History of Durham*. Vol. II, 1968 edn, pp. 275-326.

⁵⁷ Knight, 'Litigants', pp. 34, 20.

⁵⁸ The Palatinate covered the area between the rivers Tyne and Tees and had its own legal system. Knight, 'Litigants', p. 21.

industrial England. It gained its population and wealth from the coal trade that forged vital links with the capital. It had no predominant trade or industry, with the main employment divided between maritime trades, clothing, food and drink, building, and metalwork trades.⁵⁹

In contrast, the North Riding of Yorkshire was largely rural and agricultural. Communications in Yorkshire were not extensive until later in the period and manufacturing only took off in the nineteenth-century, although some areas of the North Riding were involved in the alum industry.⁶⁰ There were numerous market towns like Guisborough, Malton, Northallerton, Richmond, Thirsk and Yarm. York was the county town, the ecclesiastical centre of the diocese, and a regional communications and distributing centre for the agricultural area of the North and East Ridings.⁶¹ Thus in York most people were employed in service industries involved in the preparation and retail of food, drink, dress and apparel.⁶²

The escalating urbanisation in the north of the region during the eighteenth-century led to certain towns being criticised for their dirtiness and poverty.⁶³ Nonetheless, its two provincial capitals, York and, in particular, Newcastle, had all the trappings of the so-called urban-renaissance, with assembly rooms and theatres, a leisure industry, and a burgeoning press. In sum, the region's mixed economy meant that it was neither culturally remote nor backwards, in comparison with the south.⁶⁴

⁵⁹ Roger Howell, *Newcastle upon Tyne and the Puritan Revolution* (Oxford, 1967), pp. 1, 353. By the end of the seventeenth-century Durham and Newcastle produced 41% of Britain's coal output. Knight, 'Litigants', p. 34.

⁶⁰ Barker, *Yorkshire*, pp. 24-9, 92, 121. Alan Armstrong, *Stability and Change in an English County Town: A social study of York 1801-51* (London, 1974), pp. 16-27, 31.

⁶¹ The West Riding tended to use Leeds as its market for agricultural produce. Armstrong, *Stability and Change*, pp. 16-18.

⁶² This is taken from the 1841 census, but there is little reason to believe that the employment profile was seriously different in the previous century. Armstrong, *Stability and Change*, pp. 28-31.

⁶³ Morgan & Rushton, *Rogues, Thieves*, pp. 11-13.

⁶⁴ Literacy rates were higher than other parts of England. Morgan & Rushton, *Rogues, Thieves*, p. 10. The northeast had a very high proportion of ownership of goods largely due to the trade with London. Lorna Weatherill, *Consumer Behaviour and Material Culture in Britain 1660-1760* (Cambridge, 1988), pp. 51-2. Knight, 'Litigants', pp. 65-5. An ongoing study of the social profile of County Durham based on house-size implied in the 1674 hearth tax, shows that the mean average for hearth ownership was higher than the

Although a wide source-base is necessary to account for social and economic diversity, in the case of marriage, gender bias is no less important, and in this respect the newspaper advertisements are a particularly important source because they go some way to balancing the sex division of the sources used. Where marital conflict was concerned, women dominated both ecclesiastical and quarter sessions' justice. Between 1660 and 1800, they were plaintiffs in over 76% of cruelty, adultery, annulment and restitution cases before York and Durham church courts. They initiated just over 50% of cases relating to marital problems before the northern courts of quarter session (see Tables 7-9, pp. 52-3). This was especially a feature of the eighteenth-century.⁶⁵ Importantly, eighteenth-century newspaper advertisements were overwhelmingly male, allowing an unusual insight into the attitudes of husbands.

Even more significantly, advertisements shed light on an aspect of marriage that has been neglected for some time. Their context was financial, frequently revolving around the domestic economy. This brings similar issues complained about in the other records into sharper focus. In sum, the sources indicate that the material circumstances of marriage are as important to study as its social and cultural conditions. The economic context of marriage is often ignored, since it is more fashionable to explore contemporary culture and ideology, often at the expense of material experience. As far as wedlock is concerned, researchers are reluctant to follow Lawrence Stone's thesis of change in marital relationships between 1500 and 1800, which suggests that marriages were made for pragmatic economic and social motives at the start of the period, but

midlands and the north west, but lower than the south east and the home counties. Adrian Green, 'Social and geographic identity in the houses of Newcastle and County Durham, c. 1660-1730' (University of Durham, PhD thesis in progress).

⁶⁵ During the eighteenth-century, women dominated matrimonial suits, although the proportion decreased by the mid eighteenth-century. Men dominated the period 1770-1799 with only 32% of the suits having female plaintiffs. *Divorce*, Table 1.8, p. 428. For the ratio of male and female users of the London Consistory Courts in the seventeenth-century, see *Dangers*, p. 183.

increasingly for romantic reasons by the end.⁶⁶ One of the glaring problems with this, is the way it uncouples emotion and economics. Studies of the eighteenth-century labouring poor and commercial middling-sort do not create artificial divides between family and economics, either in the domestic or wider sense. E. P. Thompson, for example, states that the household 'was an "economic" as well as a domestic unit; indeed, it is impossible to show where "economic" relations ended and "personal" relations began, for both were imbricated in the same total context'.⁶⁷

Given that most of the people in this study made and sold goods or provided services, probably spending much of their time on the border-land between comfort and poverty according to life-cycle and circumstances, their marriages can only be understood in the framework of the household and domestic economy. As Christopher Brooks observes, the priority of most of the middling-sort was to maintain a household, provide for their family and avoid poverty.⁶⁸ The contingency of the physical environment and the sense of family collectivity were what shaped the middling-personality and motivated consumption patterns which sought to sustain the family rather than to accrue personal profit.⁶⁹

It is within this context that marriage is explored. The thesis first considers all the options open to those who suffered from marital conflict. Then, the methodology used in tackling three such different sources is addressed. This leads on to a study of how far the experience of marriage was determined by sex, and how far this changed over the

⁶⁶ See sections on the making of marriage in Stone, *Family, Sex and Marriage*, pp. 70-71, 128-136, 182, 192-216. For the recognition that marriage was an economic and social partnership see Houlbrooke *English Family*, pp. 106-110.

⁶⁷ E. P. Thompson, *Customs in Common* (London, 1991), p. 445. Also Shani D'Cruze, 'Care, Diligence and 'Usfull Pride' [sic]: gender, industrialisation and the domestic economy, c. 1770 to c. 1840', *Women's History Review*, 3, 3 (1994), 315-45; Hunt, *Middling Sort*, p. 9.

⁶⁸ Christopher Brooks, 'Apprenticeship, Social Mobility, and the Middling Sort, 1550-1800' in Barry and Brooks, *Middling Sort*, p. 52.

⁶⁹ Paul Langford observes that 'Small tradesmen, shopkeepers, and craftsmen slipped into and out of this [middling-sort] class as family fortune and commercial fate dictated', *Polite and Commercial*, p. 77. For a convincing study of middling-sort social mobility and self-identity see Michael Mascuch, 'Social mobility and middling self-identity: the ethos of British autobiographers, 1600-1750', *Social History*, 20, 1 (1995), 45-61.

period. Having dealt with the primary complaints of cruelty and adultery, it turns to grievances that are often neglected in studies of marriage breakdown, yet which offer vital insights into marital relationships. Finally, it sets the findings in context by examining the experience of wholly divided couples.

CHAPTER TWO

'their tempers did not agree': the private and public fora of domestic disputes

I

The lack of divorce with re-marriage did not mean that marriages in the long eighteenth-century were stable. In fact, it simply made it essential to resolve marital conflict before breakdown was reached. As a result there was a web of non-official and official ways to deal with dispute. Husbands and wives who had reached a point of conflict in their marriage at which they needed outside help had a number of options. The most common action was to turn to their family, friends and neighbours for accessible and cheap help through direct intervention, assistance, mediation or counselling. Both the separation and restitution suits heard at the church courts and the more detailed records of violence that came before magistrates refer to the practice. As studies of early modern society emphasise, inter- and intra-familial disputes were usually dealt with through informal channels.² Such informal intervention aimed to reintegrate a troubled couple back into a working marriage.³

Frequently, passive support was provided, with relations, friends and neighbours supplying lodgings or food to wives who had left their husband either through force or choice. Direct intervention was also common, usually offered to prevent violence (although people occasionally assisted a husband in trying to catch his wife in adultery).⁴ Servants and neighbours were particularly well positioned to intercede when

¹ William Idelle declared that he had parted from his wife for this reason. B1, *Idelle c. Idelle*, 1706, deposition of Edward Raven.

² Keith Wrightson, *English Society 1580-1680* (London, 1982), p. 157. For seventeenth-century neighbourly attempts to mediate in a breaking marriage, see Susan Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford, 1988), p. 127; idem. "'Being Stirred to Much Unquietness': Violence and Domestic Violence in Early Modern England", *Journal of Women's History*, 6, 2 (1994), 78-80.

³ This is similar to thinking about the treatment of people with mental afflictions. Pre-Freud therapy for the mentally ill was intended to reintegrate them within the bosom of the family and restore the family status quo. Roy Porter, 'Madness and the Family Before Freud: The View of the Mad-Doctors', *Journal of Family History*, 23, 2, (1998), 159-172.

⁴ It was described as 'prevention', 'interfering' and 'saving a wife'. For examples from London and Scotland see Margaret Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth-

they heard or saw marital aggression; occasionally they were hurt in the attempt to intervene.⁵ People felt strongly enough about domestic violence to respond after hearing shouts and quarrels, or after witnessing a single blow, and were prepared to directly access other people's houses. While John West, the fifty-four year-old neighbour of Robert and Barbara Dobby, was standing at his door in 1718, he heard Robert shout insults at Barbara and went into their house to investigate. Robert's parents also arrived and all, along with the Dobbys' maid, managed to prevent Robert from attacking his wife. John did not leave the house until the Dobbys were friends again.⁶ By contrast, a more roundabout method of intervention was evidently required in higher rank marriages, where neighbours were not close, nor houses particularly accessible. In these instances, servants tended to get involved.⁷

Family members and friends were primarily involved in marital conflict as mediators. This was variously described in the suits as 'intercession' or 'reconciliation', and took a range of forms. A battered wife's father or brother would visit her husband to warn him against continued ill treatment. Ann Watson claimed that her husband was cruel towards her 'notwithstanding the Interference and Remonstrance of their friends'.⁸ In 1670 Anne Henshall took sanctuary with her parents when her husband, Thomas Henshall, tried to poison her. They ensured that Thomas signed a confession, which Anne's father had written for him. This document, which was witnessed by Anne's brother, swore that Thomas would never make another attempt on Anne's life.⁹ Relations applied other sorts

Century London', *Gender & History*, 4 (1992) 21-2; Leah Leneman, "'A tyrant and tormentor': violence against wives in eighteenth- and early nineteenth-century Scotland", *Continuity and Change*, 12 (1997), 43-8.

⁵ There is no indication that women were more likely than men to come to the assistance of battered women.

⁶ BI, *Dobby c. Dobby*, 1719. Also see BI, *Finch c. Finch*, 1779, Margaret Ross's deposition.

⁷ For example, BI, *Lees c. Lees*, 1803, Mary Brisco's deposition. It is argued that direct intervention was less frequent in the later nineteenth-century. Nancy Tomes, 'A "Torrent of Abuse": crimes of violence between working-class men and women in London, 1840-1875', *Journal of Social History*, 11, 3, (1978), 335-6.

⁸ DDR, *Watson c. Watson*, 1801. Also BI, *Day c. Day*, 1699; DDR, *Bowness c. Bowness*, 1745.

⁹ BI, Trans. C.P.1673/1; CP.H/5241, *Henshall als. Wettenhall c. Henshall*, 1673.

helped his father physically attack his new stepmother.¹⁶ A spouse who failed to be a good step-parent in their partner's eyes created enormous strains upon a marriage, since the widowed often remarried to assist with the upbringing of their children.¹⁷ As James Currie declared, 'He had never married her [Jane Currie] but for his and his Childrens preferment'. He bemoaned that he could never get his wife to understand that she 'ow'd him any duty or had any Relation to, or concern with his Family.'¹⁸

II

If informal intervention or mediation failed, then couples entered the public fora of domestic disputes. The first move in taking a marriage into a more formal sphere was to turn to a local clergyman, references to which are legion in church court separation records. At the end of the seventeenth-century, George Gibson, the vicar of Withernwick, York, talked to Elizabeth Day about her marital problems and found her willing to forgive her husband's violence, if he would be kind to her and 'live with her as a good husband ought to doe'.¹⁹ Couples clearly found clerics convenient because they were close at hand, had local knowledge, provided free advice, and were suitably authoritative figures. It was widely known that one of the cleric's functions was to mediate between warring couples. Included among the accusations against the curate, John Turner, in 1706, was that '[you] doth breed strife and sedition amongst your Neighbours and very often between Man and Wife by adviseing them to part from one another (whereas by your holy office you should be a peace maker ...)'. A deponent countered that Turner had tried to reconcile a separated husband and wife; but Edward Bearparke complained that Turner had endeavoured to widen a breach between him and

¹⁶ BI, *Sayer c. Sayer*, 1711. For a step-father beating his step-son, see NRO QSB 3, 28 November, 1684, fol. 29, William Browne's complaint.

¹⁷ See chapter eight, p. 177-9. One of the reasons an Essex farmer gave for re-marrying was 'comfort' and 'careful' female management of his children. L. Davidoff & C. Hall, *Family Fortunes. Men and women of the English middle class, 1780-1850* (London, 1987), p 325. Widows may *not* have remarried in order to protect their children's interests. Robert Shoemaker, *Gender in English Society, 1650-1850: the emergence of separate spheres?* (London, 1998), pp. 136-40.

¹⁸ BI, *Currie c. Currie*, 1729. John Ballantine's deposition; Personal response to the Libel.

¹⁹ BI, *Day c. Day*, 1699.

his wife by advising her to procure a warrant from a justice of the peace against him.²⁰ As this case indicates, if clerical arbitration was inadequate or failed, the married couple might enter the more formal, more expensive and certainly more public fora that were available. These included consulting local parish officials, justices of the peace or attorneys, prosecuting in the courts of quarter sessions and ecclesiastical courts, embarking on civil litigation, and advertising in newspapers.

III

For wives faced with an immediate problem such as a financial difficulty following their husbands' desertion, or their husbands' abuse, the local overseer of the poor or constable were convenient sources of assistance. The parish officer may have been known personally since these unpaid officials were appointed by the justice of the peace to be available in each village and township.²¹ Many abandoned wives came into contact with overseers of the parish who were responsible for implementing the poor law and dealing with settlement laws.²² Constables, on the other hand, tended to intervene to quell domestic violence in their capacity as preventers and suppressers of breaches of the peace. According to common law, they were 'conservator[s] of the peace', providing policing function and carrying out regulatory duties.²³

It is impossible to estimate how many beaten or frightened wives turned to the constable. References are incidental in other sources, such as court records and newspaper reporting. Nonetheless, their relative accessibility and local knowledge must

²⁰ BI, C.P. I/2732, *office c. Turner*, 1706.

²¹ In large parishes, including Yorkshire, Northumberland and Durham, overseers were appointed to townships within the parishes. Richard Burn, *The Justice of the Peace and Parish Officer*, 15th edn, (4 vols., London, 1785), vol. 3, pp. 316-17.

²² Overseers were to raise money for the relief of the poor, lame and impotent and to organise materials to set the poor onto work. Thomas Skyrme, *History of the Justices of the Peace, Vol. II, England 1689-1989* (Chichester, 1991), pp. 54-5.

²³ Sidney and Beatrice Webb, *English Local Government from the Revolution to the Municipal Corporations Act: The Parish and the County* (London, 1929), p. 26; Joan Kent, *The English Village Constable, 1580-1642* (Oxford, 1986); Skyrme, *Justices of the Peace*, p. 51.

have made them useful to women needing help.²⁴ Traditionally criticised for inefficiency and evading the burdensome unpaid post, recent studies confirm that constables were relatively industrious and reliable in the seventeenth-century. No work has been done on their eighteenth-century counterparts, but Beattie suggests that, 'they were more active, more numerous, and more experienced by the end of the century than they would have been a hundred years earlier'.²⁵

Certainly, constables performed an informal conciliatory role in their locality.²⁶ In this capacity they could intervene between a married couple, preventing an incident developing into misdemeanour. When Barbara Dobby left her husband of one year because of his cruelty and threats, in 1719, she took a room in Pickering and worked for her living. Robert Dobby followed her, arrived with pistols and threatened to kill her and set fire to the house. In his defence he claimed that he was carrying pistols because the constable warned him that Barbara and her relations were trying to get him seized and pressed as a sailor. The constable was probably using his discretion to break up a potentially disorderly scene, by advising Robert to leave the town.²⁷ Furthermore, many of the wives who sought the assistance of constables shared their social profile. Not only did this make constables socially non-threatening, it permitted them to negotiate on an equal social footing with the abusive husbands to defuse the situation's aggression.²⁸

²⁴ In the 1730s in Newcastle there were about sixty constables, one for every 340 inhabitants. G. Morgan and P. Rushton, *Rogues, thieves and the rule of law. The problem of law enforcement in north-east England, 1718-1800* (London, 1998), p. 27.

²⁵ Kent, *English Village Constable*, passim. J. M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, 1986), pp. 70-1; Morgan and Rushton, *Rogues, thieves*, p. 29.

²⁶ Constables often settled village conflicts informally and avoided formal presentment where possible. K. Wrightson, 'Two Concepts of order: justices, constables and jurymen in seventeenth-century England' in J. Brewer and J. Styles, *An Ungovernable People: the English and their Law in the Seventeenth and Eighteenth Centuries* (1980), pp. 30-1.

²⁷ BI, *Dobby c. Dobby*, 1719.

²⁸ Kent, *English Village Constable*, p. 223. It is theorised that the violence of wife-beaters is exacerbated by disparity in power relationships. Julia C. Babcock, Jennifer Waltz, Neil S. Jacobson, and John M. Gottman, 'Power and Violence: The Relation Between Communication Patterns, Power Discrepancies, and Domestic Violence', *Journal of Consulting and Clinical Psychology*, 61, 1 (1993), 40-50.

IV

Perhaps the most heavily used forum for domestic disputes was the justice of the peace. Their duties were extensive and they dominated local affairs with their three-fold function as judges, administrators and police.²⁹ Through their responsibility for minor assaults, disorder, and poor relief, justices came into contact with a number of marriages that were either in difficulty or had collapsed. Quarter sessions justice provided a range of methods of prosecution to spouses; that is, informal mediation, binding over by recognizance, summary conviction where the defendant was fined or committed to the House of Correction and indictment. All but the latter were available out of sessions. Parliament entrusted a significant amount of judicial and administrative work to justices out of sessions, acting either singly, or in pairs at petty sessions.³⁰

Although it is difficult to quantify because of the paucity of evidence, the surviving examples of justices of the peace' notebooks or diaries indicate that a minority of some justices' work outside of court days was involved with settling issues between discontented spouses. Edmund Tew, rector of Boldon from 1734 to 1770, kept a journal outlining his activities as a justice of the peace for County Durham. In the fourteen-year period 1750 to 1764, he dealt with twenty-five instances relating to marital conflict, possibly 2-3% of his work.³¹ The justicing notebook of Henry Norris, a Hackney magistrate, which covers ten and a half years from 1730 to 1741, shows that over 6% of his time was spent on matrimonial disputes. Richard Wyatt spent less time (3.47%) on such matters during 1767 to 1776 in Surrey; whereas spouses complaining about each

²⁹ Skyrme, *Justices of the Peace*, p. 37; Norma Landau, *The Justices of the Peace 1679-1760* (London, 1984), p. 22.

³⁰ A single justice was permitted to take security to keep the peace and to be of good behaviour, to summarily convict certain offenders, and to make orders for imprisonment pending trial. The responsibilities of two justices were greater. E. G. Dowdell, *A Hundred Years of Quarter Sessions, The Government of Middlesex from 1660-1760* (London, 1932), p. 7; Skyrme, *Justices of the Peace*, pp. 62-7; Landau, *Justices*, pp. 23-7; Webbs, *Local Government*, pp. 298-300

³¹ DRO D/X 730/1.

other, in Wiltshire between 1744 and 1749 took up only 2.7% of William Hunt's time.³² Nevertheless, all four magistrates dealt with wife-beaters and runaway husbands, as well as binding over individuals for defaming married couples and causing quarrels between them (see Table 3).³³

Table 3: The number of types of matrimonial dispute dealt with by justices of the peace out of session.³⁴

<i>Types of case</i>	<i>Norris (Hackney) 1730-1741</i>	<i>Hunt (Wiltshire) 1744-1749</i>	<i>Tew (Durham) 1750-1764</i>	<i>Wyatt (Surrey) 1767-1776</i>
Wife-beating	19	8	16	6
Desertion	2	3	2	5
Other ^(a)	1	-	7	-
<i>Total ^(b)</i>	22	11	25	11

^(a) 'Other' includes one letter sent about a marital quarrel, two defamation prosecutions whose defendants allegedly claimed that they had adultery with a married woman and four prosecutions of an individual for causing problems between spouses by their actions or words.

^(b) This is the total number of incidents, some couples appeared more than once.

To people facing conjugal conflict, the benefits of using a justice of the peace might include his accessibility and local knowledge. The proximity of magistrates to their users is uncertain. Despite the increase in their number on the commission for each county during the eighteenth-century, it has been claimed that there was a shortage of active magistrates.³⁵ Thomas Skyrme, however, points out that the scarcity of justices was mostly criticised in areas that had experienced dramatic population increase and was alleviated by the influx of dedicated and responsible clerical magistrates.³⁶ Plainly,

³² Ruth Paley (ed.), *Justice in Eighteenth Century Hackney: The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book* (London, 1991); Elizabeth Silverthorne (ed.), *Deposition Book of Richard Wyatt, JP, 1767-1776*, (1978); Elizabeth Crittal (ed.), *The Justicing Notebook of William Hunt 1744-1749*, (Stoke-on-Trent, 1981).

³³ Defamation was defined as a misdemeanour, a breach of the peace. Robert B. Shoemaker, *Prosecution and Punishment, Petty crime and the law in London and rural Middlesex, c. 1660-1725* (Cambridge, 1991), p. 6.

³⁴ Taken from: Edmund Tew's journal, DRO D/X 730/1, unpaginated; Paley, *Notebook of Henry Norris*; Silverthorne, *Deposition Book of Richard Wyatt*; Crittal, *Notebook of William Hunt*.

³⁵ Beattie, *Crime and the Courts*, pp. 60-3; Landau, *Justices*, appendix A. It had been argued that no more than one quarter of justices on the commissions of the peace were active. So, each of them must have had an average district of around seventy square miles with a population of more than 5000. Webbs, *Local Government*, p. 321.

³⁶ Skyrme, *Justices of the Peace*, pp. 6-7, 26, 30; Landau, *Justices*, pp. 141-3.

magistrates attracted disputants from the locality. Edmund Tew's journal reveals that the complainants who called on him about their marriages were relatively close neighbours. They came from Monkwearmouth, Bishopwearmouth, Sunderland, Shields, Gateshead Fell, Westo and Jarrow, all towns to which Boldon was central and linked by road.³⁷ It is not clear how intimidating it was for a relatively low status individual to visit the justice, usually a member of the local elite, in his own house.³⁸ Circumstantial evidence suggests, however, that deference did not get in the way of women using justices as a source of information and help. In 1765, Jane Allison of North Shields asked her friend to go to the justice to ask his advice whether, 'she [Jane] was to putt up with that Ill usage' from her husband. Squire Collingwood's reply was that she might 'overcome Him, meaning her Husband, with Love if Possible, and if that woud [sic] not Do, that then the Law woud [sic] give her a separate Maintenance'.³⁹

Arbitration was probably the most useful service offered by magistrates out of sessions. Indeed one of the prescribed roles of a justice of the peace was to reconcile quarrels and differences.⁴⁰ Norma Landau's study of justices in Kent reveals that the urban population 'was using their justices as institutions conveniently provided by the state for the settlement of their quarrels', while rural justices tended to displace the recognizance, a legal instrument which forwarded disputants to quarter sessions, with a move towards mediation.⁴¹ Mediation was a cheap means of achieving formal intervention, without pursuing more expensive forms of prosecution.⁴² Of the four justices analysed, William Hunt explicitly recorded most often that he had caused the disputants to agree. He

³⁷ DRO D/X 730/1, unpaginated. Interestingly, most came from Shields. There was no co-resident magistrate in South Shields. Morgan and Rushton, *Rogues, thieves*, p. 20. Disputants from a ten-mile radius visited William Hunt's house. Crittal, *William Hunt*, p. 4.

³⁸ The criterion for eligibility was a property qualification, which was ownership of land of the yearly value of £20, replaced in 1732 by yearly value of £100. Skyrme, *Justices of the Peace*, pp. 23-9.

³⁹ DDR, *Allison c. Allison*, 1765.

⁴⁰ Beattie, *Crime and the Courts*, p. 268.

⁴¹ Landau, *Justices*, pp. 190-3.

⁴² Dowdell, *A Hundred Years of Quarter Sessions*, p. 9; J. A. Sharpe, *Crime in Early Modern England 1550-1750* (London, 1984), p. 89; Shoemaker, *Prosecution*, pp. 81-94.

accepted a written note or oral promise not to re-offend.⁴³ Arbitration did not just depend on the issue of a semi-formal legal document. Edmund Tew recorded writing to Mrs Jackson of Shields, in January 1760, about her husband's quarrel with her.⁴⁴

Mediation was often backed-up with the issue of a warrant, in itself the least expensive means to summon a troublesome husband before the justice for his aggressive behaviour.⁴⁵ This usually resulted in arbitration rather than further prosecution.⁴⁶ When Edmund Tew granted the first of several warrants against Robert Crisp of Jarrow on the complaint of his wife, he noted underneath 'Agreed betwixt them'.⁴⁷ Upon the appearance of Mary Draper's husband, in response to a warrant issued at her request, William Hunt 'suffered them to agree it' once Draper paid for the examination and warrant, and promised to behave well in future.⁴⁸

A further step in prosecution was to bind-over a violent spouse. Any potential victim of assault who went to a justice of the peace and declared on oath that they were in physical danger was provided with surety for the peace.⁴⁹ This meant that the person complained against was bound-over by recognizance and had to pay a fine to the crown if she/he failed to keep the peace. Two sureties were each bound for half the sum promised by the defendant, to guarantee that he/she would satisfy the recognizance's conditions. In most instances in this study, the condition was that the husbands keep the

⁴³ Crittal, *William Hunt*, p. 39.

⁴⁴ DRO D/X 730/1. Unpaginated, 17 January 1760.

⁴⁵ For instances when a warrant could be granted see Burn, *Justice of the Peace*, vol. 4, pp. 366-70.

⁴⁶ No further action was recorded for half of the warrants issued by the four justices. Undoubtedly some of these involved arbitration by the justice, since another nine of the warrants that were granted were recorded as agreed between the parties.

⁴⁷ DRO D/X 730/1. Unpaginated, 19 March 1761.

⁴⁸ Crittal, *William Hunt*, p. 52. For the formalisation in 1778 of magistrates' right to award costs to disputants, see Landau, *Justices*, p. 194.

⁴⁹ Two sorts of surety were available: for the peace and for good behaviour (in the northern courts it is not always clear whether the recognizance was binding over husbands for surety of the peace or good behaviour). Burn, *The Justice of the Peace*, vol. 4, pp. 246-8, 257; William Shephard, *A Sure Guide for His Majesties Justices* (London, 1663), p. 202. The distinction between the two was blurred. Shoemaker, 'Using Quarter Sessions as Evidence for the Study of Crime and Criminal Justice', *Archives*, 20, (1990), 151; idem., *Prosecution*, p. 27.

peace towards his wife. The intention of articles of the peace was to deter further abuse, making a recognizance an effective way for battered wives to gain protection for a specified time. Theoretically, the recognizance required the defendant to appear at the next sessions to answer questions from the justices about the objections made by the prosecutor. Yet it seems that it was used as a form of prosecution in itself, since only three of the violent husbands seen by the four magistrates were ordered to appear at the court of quarter sessions (one of them failed to do so). In all, of the fifty-seven husbands who came before the four justices, most of whom were complained against for cruelty, 95% (fifty-four) were dealt with without going on to the quarter sessions.⁵⁰ No doubt, a combination of cost, extremity of violence and willingness of the couples to accept arbitration determined this.⁵¹

Thus, quarter sessions records provide valuable insights into the types of cases concerning marital conflict that were taken further. Where marriage was concerned, the quarter sessions primarily dealt with domestic violence and desertion. Wife-beating was the most common form of matrimonial dispute that came to the attention of quarter sessions, through recognizances and indictments.⁵² The next most common category of failing marriage that justices handled, in or out of sessions, was in the form of abandoned wives or runaway husbands (over one-third). Most were the result of

⁵⁰ It is impossible to extrapolate the regional or national level of use of informal intervention by justices of the peace in marriages from the figure of 95% because of the poor survival of notebooks and journals kept by justices of the peace. For the failure of most civil and criminal law suits to go further than their initial summons or citation, see Christopher Brooks, *Lawyers, Litigation and English Society since 1450* (London, 1998), pp. 64-5.

⁵¹ See chapter six, pp. 114-20. Shoemaker discovered that only the more serious offences, or those with disputants who were reluctant to negotiate, ended up at the sessions. Furthermore, recognizances that were agreed were not always returned to sessions, a practice that varied according to the justice. Shoemaker, 'Using Quarter Sessions', pp. 146, 156.

⁵² It is not clear why there was such a difference in the proportions of cruelty and desertions between the sessions of Northumberland and North Yorkshire. Unfortunately because of the difference in recording styles it is not possible to compare the two in any detail. The difference may be due to survival of records. Many of the recognizances in Northumberland did not detail marital status or reason for being bound-over, simply for 'good behaviour'.

administrative work done by the courts relating to the poor laws, settlement acts and vagrancy legislation (see Table 4).⁵³

Table 4: Breakdown of cases relating to marital problems dealt with by the courts of quarter sessions, 1660 to 1800.⁵⁴

<i>Types of cases</i>	<i>North Riding of Yorkshire</i>		<i>North-umberland</i>		<i>Durham</i>		<i>Newcastle</i>		<i>Total</i>	
	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>
	194	100	93	100	31	100	19	100	337	100
Wife-beating	99	51.03	27	29.03	13	41.93	14	73.68	153	45.40
Desertion	57	29.38	50	53.76	15	48.38	-	-	122	36.20
Misc. (a)	38	19.58	16	17.20	-	-	4	21.05	58	17.21
Possible (b)	-	-	-	-	3	9.67	1	5.26	4	1.18

The figures for the North Riding include Scarborough and Richmond borough courts of quarter sessions. The number of married couples is stated, although the number of entries is higher since the court dealt with many of the couples more than once.

(a) References to disputing spouses in a number of other cases that came under the jurisdiction of the courts, such as bastardy filiations, prosecutions against adulterers, and defamation cases. A few husbands bound-over their wives for threatening them, or accused them of attempted murder, and one wife was incarcerated for refusing to work and for deserting her husband and family.

(b) A number of entries in the quarter sessions order books appear to deal with either a battered or deserted wife, but are less specific than normal entries and have been included in this study under the category of 'possible'.

Possibly, magistrates working out of sessions were, in well-served areas, more accessible than the quarter sessions courts, but the sessions were in turn more readily available to couples with marital problems than the church courts. Durham and Newcastle sessions met at the county town of Durham and in the city of Newcastle.⁵⁵ In Northumberland and the North Riding the sessions were peripatetic and planned to allow those from outlying and more inaccessible areas to be within travelling distance of a sessions at least once or twice a year. For example, the pattern of general and divisional quarter sessions in the North Riding of Yorkshire was the best solution to the

⁵³ The Newcastle order books do not have petitions for relief, which explains the absence of desertion cases. It is recorded for each session that petitions for relief were referred to the alderman who was appointed for the several parishes to take care of the poor.

⁵⁴ Derived from all references to marital problems in: NYCRO QSB/1685-1800, QSM/1703-1800, DC/SCB VI 2/1/1/1-4 and DC/RMB III 3/1/3; DRO Q/S/OB 5-16; TWAS QS/NC/1/2-8; NRO QSB 1-87 and QSO 1-15.

⁵⁵ Durham quarter sessions were held in Durham castle, and occasionally at Bishop Auckland or Stanhope. C. M. Fraser (ed.), *Durham Quarter Sessions Rolls 1471-1625* (Newcastle, 1991), p. 9. For an account of borough quarter sessions see Beattie, *Crime and the Courts*, pp. 5-6.

topography of the area.⁵⁶ The cycle from 1660 to 1716 was such that the western and eastern wapentakes of the county were covered twice a year. The Epiphany and Midsummer sessions included one session at Richmond, in the west, and the other was either at Helmsley or New Malton in the east. The sessions also visited the north-eastern towns of Stokesley or Guisborough and the south of the riding in Easingwold. When these county sessions are included with the borough sessions, then the area was reasonably covered. This reduced travelling expenses for those who needed to attend court and meant cases were heard by local juries and presided over by justices of the peace familiar with the locality.⁵⁷

V

Users of the church courts had more court days on offer than the quarter sessions. York and Durham held court fortnightly (in term) in the north transept of York Minster and in the Galilee Chapel of Durham Cathedral.⁵⁸ Nonetheless, the availability of the church courts to their users was curtailed by the fact that the north-east contained two very large dioceses compared to others in England. The diocese of Durham was divided into the two archdeaconries of Durham and Northumberland. Thus the ecclesiastical courts at Durham City served two large counties and the town of Newcastle. They also covered Alston in Cumberland and two Yorkshire townships in Sockburn. Several parishes and chapelries in Durham and Northumberland came under the jurisdiction of the peculiar of the Dean and Chapter of Durham. On the other hand, Hexham was under the jurisdiction of the archbishop of York, and Thockrington was an ecclesiastical peculiar attached to York.⁵⁹ Similarly, the courts in the city of York served the whole of the

⁵⁶ For origins see G. C. F. Forster, 'The North Riding Justices and their Sessions, 1603-1625, *Northern History*, 10 (1975) 110-111; J. C. Atkinson (ed.), *The North Riding Record Society, Quarter Sessions Records* (London, 1888 and 1889), vols. 6 and 7. It was only later in the eighteenth-century that the sessions tended to settle at Northallerton. Northumberland sessions assembled at various places including Hexham, Alnwick and Morpeth.

⁵⁷ Forster, 'The North Riding Justices', p. 111.

⁵⁸ At York the Dean & Chapter and Consistory Courts were transferred to the south transept in 1776. K. M. Longley, *Ecclesiastical Cause Papers at York: Dean and Chapter's Court 1350-1843* (York, 1980), p. xii.

⁵⁹ Margaret McCollum, 'Changes in the patterns of ecclesiastical jurisdictions in and connected with the diocese of Durham during the nineteenth century, with a note on the location of the records of these

county of Yorkshire. York had several ecclesiastical courts. The Consistory court heard suits between parties; the Court of Chancery heard appeals from the Consistories of the province, that is Chester, Durham, Carlisle, Sodor and Man, the Archdeaconries of the diocese,⁶⁰ and the Dean and Chapter court.⁶¹ All these dealt with matrimonial suits.⁶² The latter was the largest and most important peculiar in the diocese of York consisting of parishes in York, the three Ridings, Nottinghamshire and Lancashire.

Theoretically, the courts of quarter sessions offered only short-term solutions to spouses suffering from matrimonial problems, whereas permanent escape from marriage was offered through the ecclesiastical courts. They were the venue for those who wished to end a marriage through annulment and for those who sought relief from a problem marriage through a suit for separation from bed and board on the grounds of cruelty or adultery, or restitution of conjugal rights. All these suits were instance business where litigation was between parties (the study also encompasses a number of office disciplinary causes where an individual was prosecuted by the court for adultery) (see Table 5).⁶³

jurisdictions', *Transactions of the Architectural and Archaeological society of Durham & Northumberland*, New Series 6 (1982), 61-5.

⁶⁰ The archdeaconries of Yorkshire were the Dean of York, Cleveland, the East Riding, and Nottingham. The Archdeaconry of Richmond was in the diocese of Chester, providing Chester with two consistory courts. The Archdeaconry of Nottingham was a semi-independent jurisdiction with its own consistory courts, essential considering its distance from York (causes found referring to archdeaconries: one instance and four office from Archdeacon's court of Richmond; two Office from Archdeaconry of Nottinghamshire; one office from Archdeacon's Court of Northumberland).

⁶¹ All appeals were removed to the Chancery court after 1675. W. J. Shiels, *Ecclesiastical Cause Papers at York: Files Transmitted on Appeal 1500-1883* (York, 1983), p. 5. Appeals from the York Consistory, Chancery and Exchequer Courts went directly to the High Court of Delegates in London.

⁶² Generally, Archdeaconries do not seem to have taken on instance litigation, and were only involved with correction business. Ronald A. Marchant, *The Church Under the Law: Justice, Administration and Discipline in the Diocese of York 1560-1640* (London, 1969), pp. 40, 122, 147. Ralph Houlbrooke, *Church Courts and the People During the English Reformation 1520-1570* (Oxford, 1979), pp. 31-4.

⁶³ Anne Tarver, *Church Court Records*, (Sussex, 1995), p. 2.

Table 5: Breakdown of ecclesiastical causes relating to marital problems heard at York and Durham ecclesiastical courts, 1660-1800.⁶⁴

	<i>York</i> ^(a)		<i>Durham</i>		<i>Total</i> ^(b)	
<i>Types of cases</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>
	130	100	55	100	185	100
Cruelty	32	24.62	15	27.27	47	25.41
Adultery ^(c)	21	16.15	2	3.64	23	12.43
Restitution	15	11.53	9	16.36	24	12.97
Annulment	9	6.92	2	3.64	11	5.95
Office Adultery	35	26.92	10	18.18	45	24.32
Miscellaneous ^(d)	18	13.85	17	30.91	35	18.92

(a) Figures for York include cases that were transmitted there on appeal, so include some that were initiated at the consistory courts (including Durham) and archdeaconry courts of its province.

(b) No attempt has been made to count entries in the act books of either diocese in order to gauge how far the survival of cause papers matches the number of cases brought (during the sampling of the York act books, for example, four matrimonial suits were noticed for which no cause papers survive). The attempt to enumerate the instances of formal separation is outside the scope of this thesis.

(c) The low number of adultery cases found for the period in Durham is influenced by survival of cause papers, and seems lower than it was because some cases which were appealed to York have been included in York's total.

(d) The York cases categorised as miscellaneous were indexed as matrimonial or adultery suits. They include, however, an alleged rape, defamation, incest between blood relatives, the disciplining of a curate, divorce for sodomy, five jactitations and four disputed contract marriages all of which appear to have involved 'marriages' of some length, and an office fornication that mentions marital cruelty. Durham's miscellaneous category includes two suits referring to adultery, and fifteen defamation cases where the defendant allegedly slandered the plaintiff by accusing them of adultery. As a result, the two courts' cases are not comparable.

Despite the fact that the church courts offered the best way to break free from a broken marriage, it is clear they were not always used in this manner. A large number of causes were simply abandoned or agreed, before ever reaching sentence.⁶⁵ This was particularly so in the causes dominated by women plaintiffs. In line with Laura Gowing's findings for the London consistory court in the previous century, northern men's separation suits reached sentence more often than women's did.⁶⁶ Causes that went no further than the Libel probably served a similar purpose to warrants issued by justices, in that they both served to warn the recalcitrant spouse without incurring great

⁶⁴ Derived from sampled cases in BI and DDR matrimonial cases.

⁶⁵ A suit could be discontinued with only a small sum payable for dismissal. Martin Ingram, *Church Courts, Sex And Marriage In England, 1570-1640* (Cambridge, 1987), p. 57. For the difficulties in discovering the outcomes of causes due to the nature of recording sentences, see *Dangers*, p. 39.

⁶⁶ Only 26 % of women's separation suits alleging their husband's violence at the London consistory court received a final sentence. *Dangers*, pp. 39, 181.

expense.⁶⁷ Furthermore, like the conciliatory actions of justices both within and without the secular courts, active mediation by church court judges played a part in instance suits.⁶⁸ After Elizabeth Finch sought a separation from her husband, Samuel, in 1779, on the grounds of his violence, Durham consistory court's judge asked both parties if Samuel would take Elizabeth back and treat her as a husband ought, according to his circumstances.⁶⁹

VI

Another restriction connected with the church courts was that long-term separation was offered on only two grounds, namely adultery and cruelty. The alternative for couples who either could not or did not wish to pursue this avenue, was to arrange a private separation, a form of 'quasi-legal collusive self-divorce'.⁷⁰ These agreements entered the public domain because they necessitated outside advice from a legal adviser, involved a legal document with trustees and many of them were publicly announced in newspapers.⁷¹ Evidence of such separations is haphazard. Detailed church court suits mention attempts to agree on such contracts. A relative of Elizabeth Laughton described his role in negotiating one such agreement, which ultimately failed, between Elizabeth's husband and her brother, as Elizabeth's trustee.⁷² In 1767, Newcastle quarter sessions found that William and Jane Wrangham's marital differences were irreconcilable. Thus it ratified the terms and conditions under which both could live apart, one of which was

⁶⁷ Around 60% of matrimonial causes in the Court of Arches were settled out of court and did not reach sentence. *Divorce*, p. 37. The proportion of cases going to sentence at the London Consistory Court declined by half to 7.2 % in 1735-45, Tim Meldrum, 'A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-1745', *London Journal*, 19, 1, (1994), 3-4. For costs see Houlbrooke, *Church Courts*, pp. 50-51.

⁶⁸ It was the duty of the ecclesiastical judge to encourage peaceful settlement of dispute by compromise or arbitration. Houlbrooke, *Church Courts*, pp. 43-4.

⁶⁹ BI, *Finch c. Finch*, 1779. Samuel agreed to the judge's proposal. Elizabeth refused because she feared further cruelty. As a result, the judge rejected Elizabeth's petition for alimony and costs, and Elizabeth's proctor appealed.

⁷⁰ The origin of deeds of separation was in the 1650s. *Divorce*, pp. 149, 189. Susan Staves describes them as separate maintenance contracts, 'Separate Maintenance Contracts', *Eighteenth Century Life*, 11 (1987), 78-101.

⁷¹ Twelve percent of 287 advertisements placed by husbands in Newcastle and York newspapers involved marriages ended by mutual separation and referred to bonds, deeds or separate maintenance (see Table 6, p. 39).

⁷² BI, *Laughton c. Laughton*, 1721. See also BI, *Spence c. Spence*, 1782.

that 'a proper Deed of Seperation [sic] be settled and approved'.⁷³ The press reported on private separations and they sometimes were referred to in diaries and literature. Thus, Thomas Gyll, variously the solicitor-general of the County Palatine of Durham in 1733 and the recorder of the city of Durham in 1769, commented in his diary, in 1762, on the separate maintenance allowed by Ralph Carr of Cocken to his wife.⁷⁴ But in general, separate maintenance agreements come to notice because one of the spouses reneged on its conditions and a law suit resulted. Contracts often contained clauses that allowed the couple to live where they wished and protected them from law suits. Ecclesiastical courts, however, ignored these conditions.⁷⁵

The goal of most separation contracts was to re-organise the financial and living arrangements of the separating couple. Alimony and jointure were stipulated and the rights of each spouse, often in relation to an existing marriage settlement, were established. Thus the deed of separation, dated 9 September 1749, between Godfrey Wentworth and his wife, Dorothea's, trustees (her brothers), committed him to pay his wife £420 for her alimony, and, if she survived him, to settle an annual sum of £150 as an increase of her jointure of £250 a year.⁷⁶ Deeds often stipulated that a wife could possess certain goods and money for separate use without the interference of her husband. Thus Godfrey Wentworth was committed not to meddle with his wife's annuity and Dorothea was to retain separate use of certain lands. Her husband was forbidden to claim any clothes, goods or chattels thereafter, nor interfere with any money paid to her or her trustees. Further, she could make her own will and sign acquitances and discharges, and dispose of her money as she wished. In effect,

⁷³ TWAS QS/NC/1/7, pp. 388, 389, 391. Both spouses represented by attorneys.

⁷⁴ Nine references in the Newcastle press, mostly between 1769 and 1772. For diary evidence, see 'The Diary of Thomas Gyll' and 'The Diary of Nicholas Brown' in J. C. Hodgson (ed.), *Six North Country Diaries*, The Surtees Society, vol. 118 (Durham, 1910), pp. 212, 266.

⁷⁵ Henry C. Coote, *The Practice of the Ecclesiastical Courts* (London, 1847), p. 362.

⁷⁶ Early contracts were made between husband and wife, rather than her trustees, and were often enforced in law until the 1780s. One idea underlying contracts was that the allowance for the separated wife came from the interest on her property. Staves, 'Separate Maintenance', pp. 83, 93.

agreements allowed a wife to act as if she were unmarried and not under coverture. Thus deeds frequently protected a husband against his wife's debts.⁷⁷

It is usually considered that the use of private separation deeds was restricted to the gentry, or higher middling-ranks, partly because they were the prerogative of those who had property to organise. Despite the overall accessibility of attorneys, cost was also a factor in their restricted use. Lawyers were available to a substantial cross-section of the population, indeed 70% of their clients consisted of yeomen, husbandmen, merchants and artisans. Even small towns had an attorney ready to carry out non-litigious services such as acting as a general adviser to clients on issues not directly concerned with law suits, as well as the drawing of legal instruments. But deeds were costly and likely to have been affordable only by the relatively wealthy. A casebook belonging to George Draper from 1669 shows charges for instruments varying between 13s. 4d. and £1.⁷⁸ So, though a deed was a cheaper means by which to organise separation than a separation from bed and board, it remained an expensive legal procedure to a wide section of the population.

Yet, there is evidence that an alternative existed for those unable to find the means to employ a lawyer, in quasi-legal separations that were apparently not drawn up by lawyers but were approved by magistrates.⁷⁹ In 1798 George Gibson of Newcastle placed an advert in *The Newcastle Advertiser*, entitled 'Separate Maintenance', announcing that he and his wife had mutually agreed to separate 'and the same having been sanctioned by the Magistrates', he refused to pay any debts she contracted.⁸⁰

⁷⁷ BI, *Wentworth c. Wentworth*, 1756.

⁷⁸ Christopher Brooks, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge, 1986), pp. 184, 195, 240-1, 264. The number of attorneys in various towns drawn from the Law Lists of 1790 and 1800, shows, for example, that in 1790 Hexham had ten, Malton one, and Newcastle twenty-nine. Robert Robson, *The Attorney in Eighteenth-Century England* (Cambridge, 1959), Appendix 4.

⁷⁹ See TWAS QS/NC/1/3, Epiphany Session 1701, order made about Elizabeth and Jonathan Spooore (unpaginated); QS/NC/1/4, 11 October 1732, order made about Margaret and George Davison, p. 116.

⁸⁰ *The Newcastle Advertiser*, 20 October 1798, p. 1.

Aldermen and mayors were also involved in their capacity as justices of the peace for their borough or corporation. For example, the cause between Elizabeth and William Idelle referred to their existing separation. In front of the mayor of Hull and other witnesses, William gave a bond that he would pay Elizabeth maintenance of £50 per annum.⁸¹ Indeed, the courts of quarter sessions legitimised many separations when they ordered that a deserting husband pay for his wife's upkeep. At Ann Taylor's complaint that her husband had been cruel to her and left her for another woman, the quarter sessions simply ordered him to pay maintenance to her and his child.⁸² James Brown was ordered to pay maintenance at Epiphany 1754 sessions, 'so long time as the said James Brown and Ann his Wife shall live separate'.⁸³

VII

Common law also provided husbands, through the law of torts, with the right to sue for damages the individual responsible for the loss of their wives' marital services, which included her sexual relations, her companionship and her household services.⁸⁴ This type of suit fell into two categories. Firstly, men could sue an individual for loss of consortium, which was popularly known as a suit against those harbouring or entertaining a wife. Twenty-three of the northern advertising husbands threatened to implement this law against landlords and employers. The second type of action for loss of consortium was the criminal conversation action. A husband who discovered that his wife was committing adultery was able to sue her lover for money damages. The action may have been restricted to the financially substantial, but its use is still unclear.⁸⁵ Using bills for parliamentary divorces, printed pamphlets about criminal conversation actions or adultery trials, newspaper reporting, and the English Law Reports, Lawrence Stone lists a total of 210 cases between 1680 and 1800. With the same sources Susan

⁸¹ BI, *Idelle c. Idelle* 1706.

⁸² NRO QSB 58, 1722, fol. 40, QSO 6, various orders, pp. 212, 220, 227, 241.

⁸³ NYCRO QSB/1751, p. 109.

⁸⁴ P. S. James with D. J. L. Brown, *General Principles of the Law of Torts* (London, 1978), pp. 333-4.

⁸⁵ *Divorce*, p. 234. Susan Staves, 'Money for Honor: Damages for Criminal Conversation', *Studies in Eighteenth Century Culture*, 11 (1982), pp. 279-97.

Staves found ninety cases, for which the boundary dates are not stated.⁸⁶ The action was available nation-wide, as suits could be prosecuted at county assizes as well as the central court of King's Bench, but no studies have established whether criminal conversation litigants were mostly metropolitan.

A range of circumstantial evidence, however, points to an easy familiarity with, and use of, the action in northern England. Separation causes often mention criminal conversation actions. The adultery separation brought by Hooker Barttelot against his wife Amelia in 1793 referred to his suit against her lover, Samuel Hawker, at the Court of King's Bench in 1790, for which he was awarded £787 damages.⁸⁷ References also arise in the press and family papers. The sampled Newcastle and York papers reported twenty-six criminal conversation actions from the 1730s to the end of the century. It is difficult to trace criminal conversation actions, however, because many were threatened but negotiated out of court. The Baker Baker family papers contain a receipt from William Burton, dated 6 June 1791, for £50 received as damages for criminal intercourse which took place between William's wife and Edward Milbanke. Burton released Milbanke from any future suits on account thereof.⁸⁸ In August 1744, George Surtees applied to John Widdrington, a Newcastle attorney, to bring an action against George Coulson, the alleged lover of Surtees' wife. The attorney then contacted Coulson and acquainted him of these directions. Following negotiation, Coulson paid £51 5s. 0d. and the attorney drew up a release between the parties.⁸⁹

⁸⁶ Existing figures illustrate an acceleration in numbers of suits from the 1760s. *Divorce*, table 9.1, p. 430; Staves, 'Money for Honor', p. 281.

⁸⁷ BI, *Barttelot c. Barttelot*, 1793.

⁸⁸ University of Durham Library, Special Collections and Archives, Baker Baker, vouchers, ref. 92/83.

⁸⁹ BI, *Surtees c. Surtees*, 1745.

VIII

Marriages that were in difficulties, or had ended through elopement or mutual separation also came before the public in newspaper advertisements.⁹⁰ Adverts varied in length, although all took the style of general advertisements, and were invariably dated and signed by the advertiser, and sometimes witnessed by one or two other signatories.⁹¹ The majority informed local traders that a husband would no longer settle any debts entered into by his wife. Thus, Alice Jarvis's husband refused to be accountable any longer for her debts, announcing that she 'has of late behaved in a very indifferent Manner, and during my Absence contracted several Debts'.⁹² Unable in their own right during coverture to enter contracts, married women could vicariously enter them through the law of agency, by pledging their husbands' credit with tradesmen for the supply of necessities suitable to their station in life. These were defined as food, lodging, clothing, medical attendance and medicines.⁹³ In nearly 90% of the adverts, as well as in those instances where a bell-man or handbill was used, husbands specifically denied their wives the right to use the law of agency (see Table 6).⁹⁴

⁹⁰ Herman R. Lantz, *Marital Incompatibility and Social Change in Early America* (London, 1976). For an example of adverts in *The Leeds Intelligencer*, see John Jefferson Looney, 'Advertising and Society in England, 1720-1820: A Statistical Analysis of Yorkshire Newspaper Advertisements' (Princeton University, PhD thesis, 1983) p. 88.

⁹¹ Adverts were the main source of local information in eighteenth-century newspapers. Donald Read, 'North of England Newspapers (c 1700-1900) and their Value to Historians', *Proceedings Leeds Philosophical & Literary Society*, 8 (1957), 202.

⁹² *The Newcastle Chronicle*, 4 February 1775, p. 3.

⁹³ O. R. McGregor, Louis Blom-Cooper, and Colin Gibson, *Separated Spouses: A study of the matrimonial jurisdiction of magistrates' courts* (London, 1970), p. 8; Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Oxford, 1983), pp. 27-30; Margot Finn, 'Women, Consumption and Coverture in England, c 1760-1860', *The Historical Journal*, 39, 3 (1996), 702-22 (she calls it the law of necessities).

⁹⁴ Adverts placed by American husbands in the eighteenth century fulfilled the same functions, Lantz, *Incompatibility*, p. 12.

Table 6: Number of types of advert involving marriage placed in the Newcastle and York newspapers between 1711 and 1800.

	<i>N</i>	<i>%</i>
<i>Types of advertisements</i>	<i>214</i>	<i>100</i>
Elopement	119	55.61
Debt	43	20.10
Separation (mutual)	26	12.15
Hue & Cry ^(a)	14	6.54
Miscellaneous ^(b)	12	5.61

This reflects the numbers of couples, not the number of advertisements, which was higher due to repeated placements and responses.

^(a) Placed by the overseers of parishes seeking the whereabouts of absconded husbands who had left their wives and families chargeable to the parish.

^(b) Adverts that referred to marriages troubled in other ways, includes four advertisements referred to in other sources so that their category cannot be specified.

The actions of husbands notifying local retailers and trades-people not to give their wives credit were not a new phenomenon dependent upon newspapers. In the seventeenth-century, husbands had their message called out by the local bell-man.⁹⁵ In October 1696 Anne Shaw informed York Dean and Chapter court that because her husband refused to replace her tattered clothing, she was forced to order new clothes on trust, leaving him to pay for them. As a result he, 'did most scandalously cause ... [her] to be cry'd in the church yard on a Sunday as people came out of the church that noe p[er]son whatsoever at their perill should trust her anything'.⁹⁶ This form of advertising continued to be used in the next century. Mary Bell's Libel alleged that her husband threatened to cry her down at several market towns, when newspapers were readily available.⁹⁷

Bell-men were cheaper than press advertising. Employing the services of a bell-man in Sheffield cost 6d. in 1764, and 1s. in Manchester in 1772. Bell-men, like handbills, targeted a local audience. The former was particularly useful, as John Styles states, in a concentrated urban area, the latter in rural areas where newspaper circulation was

⁹⁵ A bell-man was the equivalent of a town-crier, Webbs, *Local Government*, p. 34. For a reference to men pasting and distributing hand-bills see Elizabeth Ann Foyster, 'The Concept of Male Honour in Seventeenth Century England' (University of Durham, PhD Thesis, 1996), p. 205.

⁹⁶ BI, *Shaw c. Shaw*, 1696. See also BI, *Pighells c. Pighells*, 1697; BI, *Vavasour c. Vavasour*, 1715.

⁹⁷ BI, *Bell c. Bell*, 1749.

limited.⁹⁸ The cost of advertising in a provincial newspaper increased during the eighteenth-century due to taxes. In the 1720s the basic rate was 2s. 6d. and reached 5s. by the 1790s to which a duty had to be added.⁹⁹ But newspapers captured a wider audience; replacing the need to use more than one town-crier. Elizabeth Pighells' husband in 1697 'ordered severall Bel-men in severall markt towns to give notice to and forbid all tradesmen and others to trust her for any goods, wares, meate, drinke, washing or lodging'.¹⁰⁰ Several media captured the widest audience, explaining why the Wranghams' advertisement was placed in the newspaper as well as cried out by the bell-man.¹⁰¹

In addition to some degree of malicious intent, advertising husbands sought to control their wives' financial expenditure to avoid extra debt and to protect their credit situation. In 1685 Daniel Ottie of York explained that he issued an advert about his wife 'for his own security and to p[re]vent her from running him into debt'.¹⁰² While the tone and content of the press adverts changed little throughout the seventy years, there were noticeable peaks in their frequency, which were probably connected to economic patterns. Developing during the 1730s, the adverts increased substantially in the 1740s, dropped in the '50s, then peaked in the 1760s. Advertising fell in the '70s, again in the '80s, but climbed back up in the 1790s.¹⁰³ The higher use of adverts coincided with times of war and its aftermath, and the leap of advertising in the 1760s may have been a consequence of the economic recession following the Seven Years War.¹⁰⁴ Such

⁹⁸ John Styles, 'Print and Policing: Crime Advertising in Eighteenth Century Provincial England' in Douglas Hay and Francis Snyder, *Policing and Prosecution in Britain, 1750-1850* (Oxford, 1989), pp. 69-73.

⁹⁹ Duty in 1757 was 2s., by 1789 it was 3s. Looney, 'Advertising and Society', p. 36.

¹⁰⁰ BI, *Pighells c. Pighells*, 1697.

¹⁰¹ *The Newcastle Chronicle*, 14 January 1769, p. 3.

¹⁰² BI, *Ottie/Otley als. Awtie/Awtey c. Ottie/Otley als. Awtie/Awtey*, 1685.

¹⁰³ The growth in circulation and readership of newspapers and resulting increase in their use for local advertising explains the general expansion. Looney, 'Advertising and Society', pp. 24, 38. In 1780 an act of parliament placed an additional duty of 6d. on adverts, and this may have some bearing on the decrease in the 1780s.

¹⁰⁴ For periods of poor weather, harvests and economic disruption due to war, see Paul Langford, *A Polite and Commercial People: England 1727-1783* (Oxford, 1989), pp. 147, 153, 443-448, 565. Also Julian

circumstances were likely to encourage men who felt that their credit was threatened by the activities of their wives to take any opportunity to safeguard their place in the credit system. Advertising was an ideal means to do this.

IX

Margaret Hunt argues that women who brought a separation suit to the ecclesiastical courts were success stories, because they were able to leave their husbands due to their determination and because of emotional and financial support from allies.¹⁰⁵ In fact, they were probably perceived to be the failures since other, more acceptable, forms of mediation and intervention, both private and public, had failed. The highest stages of formal court action were recognised to be potentially damaging to a union. When she was advised to return to her husband, in the 1760s, Catherine Ettrick replied, 'How can I go home to a Man that I have swore the peace against in open Court?'.¹⁰⁶ The concept was fundamental to one element of the questions about a couple's marriage addressed to deponents in the ecclesiastical courts. For example, in the suit for separation brought by Elizabeth Pighells against her husband, the rector of Patterington, in 1697, both his violence and her adultery were alleged. Despite the accusations and counter accusations, a number of the fifteen witnesses opined that Elizabeth could have lived peaceably with her husband, if she had pleased, *before* the suit commenced. The suit jeopardised this possibility.¹⁰⁷ Clearly reconciliation or the management of a problem, achieved through the assistance of relations, friends, members of the community, and even justices of the peace out of sessions, was the goal to be aimed at in resolving marital conflict.

Hoppit, 'Financial Crises in Eighteenth-century England', *Economic History Review*, 2nd ser. 39, I (1986), 39-58.

¹⁰⁵ Hunt, 'Wife Beating', p. 24.

¹⁰⁶ BI, *Ettrick c. Ettrick*, 1765.

¹⁰⁷ BI, *Pighells c. Pighells*, 1697.

CHAPTER THREE

'Conjugal Complaints': marriages in crisis.

I

The complaints expressed by spouses in matrimonial suits before the ecclesiastical courts make a solid foundation for an exploration of what was considered suitable and unsuitable marital behaviour over the 140 years studied. The written pleading of the ecclesiastical court system used by the judge in his decision making, rather than the verbal pleading heard by a jury in secular courts, leaves the most detailed evidence of the language of marital complaint. Each step of the legal process generated documents which were given on oath. The plaintiff's Libel took the form of numbered paragraphs known as articles. Once biographical details were established, the statements of the prosecution's case were set down with an article for each dated complaint.² The defendant answered these in a Personal Response in which the articles were affirmed, qualified or denied. With the latter response, alternative versions of the claims were offered. Defendants could also provide Allegations that set out their counter-case. Additional Allegations (or Positions Additional) could be offered by either party providing further information, which the opposing party answered with yet more personal responses. Deponents for the prosecution or the defence responded to the Libel, to the other documents generated by the parties, as well as to Interrogatories, which Purvis likens to a form of cross-examination. Deponents deposed in private and their responses were written down by the clerk of the court.³ The cause papers could be specific, detailed and extensive.

The records that survive from the dealings of justices out of court, and from the courts of quarter sessions are less open to detailed analysis. Entries in Justices' notebooks are

¹ *GM*, vol. 2, February 1732, p. 602.

² Biographical details include the full names of the couple, their ages, date of courtship, wedding, place of residence following the ceremony, occupation or status of husband, and number of children. Unfortunately it is rare to have all these listed.

³ See J. S. Purvis, *An Introduction to Ecclesiastical Records* (London, 1953), pp. 66-94; Anne Tarver, *Church Court Records* (Sussex, 1995), pp. 7-30; and Martin Ingram, *Church Courts, Sex And Marriage In England, 1570-1640* (Cambridge, 1987), pp. 48-59.

cursory records of judgements made by the magistrate, not detailed pleas by parties. Quarter sessions order books contain brief records of judicial business, and/or administrative business. Allusions to marital dispute in them are better suited to statistical breakdowns of types of prosecution, sums of binding-over, and the outcomes of appearances. Even so, quantitative analysis is difficult because of variations in styles of recording. For instance, not all recognizances give the name of the victim or their relationship to the accused and simply state that the accused was bound-over to keep the peace. On other occasions, often in the same series, basic details were recorded. Thus we learn that Jonathan Spoore, a smith, had beaten his wife, knocked her down with a piece of iron, cutting her head, and threatened to kill her in January 1701. Following orders reveal that he was ordered to pay his wife 2s. 4d. per week and provide a furnished room for her to live in for the rest of her life.⁴

Quarter sessions bundles are much more informative, containing papers received or created during sessions, such as informations, depositions, petitions, presentments, recognizances, indictments, and poor law papers. Often narrower in focus than comparative cause papers because the sessions' documents were most concerned to establish the primary issue, usually a violent incident or desertion, and rarely providing defences, they nonetheless contain similar grievances to those expressed in separation and restitution suits. Thus they provide excellent supporting evidence for an exploration of conjugal complaints constructed round those expressed in ecclesiastical cause papers.⁵

Cause papers themselves must be treated with caution, and several factors need to be considered when using such evidence.⁶ Firstly, both the survival of documents or the

⁴ TWAS QS/NC/1/3, 30 November 1700 (unpaginated).

⁵ For example see NYCRO QSB/1737, William Moon's recognizance, 16 October 1736, examination of Ellen Moon, 6 October 1736, MIC 131. Also NRO QSB 4, Midsummer 1686, fols. 1-3, 30.

⁶ Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998), pp. 14-20. His exploration of the limitations of legal records, which he applies to the sixteenth century Court of Requests, is particularly astute and this discussion is based upon the framework that he provides.

extent to which a cause was sued can affect interpretation, for example providing only one spouse's version of a marriage. Detailed causes, that is those that produced the most documents, were those most vehemently defended. This suggests that the parties were reluctant to compromise, unlike the majority who quickly abandoned a suit following mediation. So this could mean that they are unrepresentative of the causes, which themselves can be accused of being unrepresentative of marriages in general. Secondly, accounts given by litigants and deponents were mediated through the male legal profession.⁷ The clerk recorded the words of litigants and deponents, usually in the third-person, ordering them into a legal structure. Tim Stretton observes that clerks probably summarised the responses of deponents and 'translated' regional dialects.⁸ Still, natural idioms, expletives and feelings did escape the legalese net, leaving some sense of the 'real' responses of various speakers. Admittedly, on occasion, the answers of different deponents to the same question were inter-changeable. Yet, to quote Natalie Davis's observations about pardon letters, there was a variety about them that seems difficult to categorise as the trademark of particular legal hands. Simply put, different people sound different.⁹

If clerks summarised and sanitised the events in question, it is often suggested that proctors re-shaped them, not necessarily resulting in fabrication, but perhaps leading to distortion.¹⁰ Marital events were selected and ordered by proctors to fit legal necessities and smooth the passage of a suit. For example, a draft libel survives from the separation suit brought by Jane Gomeldon. This listed the instances of beating, leaving a gap for the date to be filled in, with the instruction in the margin, 'specify as many days particularly as you can on w[hi]ch he beat hear [sic]'. It ended with the observation that the case would be strengthened if there were any instances of Francis Gomeldon

⁷ *Danger*, pp. 44-8.

⁸ Stretton, *Women Waging Law*, p. 16.

⁹ N. Z. Davis, *Fiction In The Archives: Pardon Tales And Their Tellers In Sixteenth-Century France* (Cambridge, 1987), p. 23.

¹⁰ Stretton, *Women Waging Law*, pp. 16-17.

committing criminal conversation prior to Jane's departure.¹¹ Even so, court documents were firmly grounded in the truth. In addition to the Libel and Allegation of Faculty, from Elizabeth Harding's 1742 separation suit against her husband of Seaham, there survive two letters. They answered the proctor's request for information and, judging by their use of the first-person, illegibility and phonetic spelling, were perhaps written by Elizabeth. Significantly, the acts of violence and income of the husband described in them formed the basis of the two legal documents, and the Libel even echoed one or two sentences.¹²

Tim Stretton asks whether it was litigants or their lawyers who were instrumental in setting forward the ideals and values captured by legal records.¹³ Importantly, thirteen matrimonial causes contained in the Durham Diocesan Records include correspondence received by the proctor handling the suit, or material that informed the final legal documents. They reveal that proctors did not always have the final say in the way a suit progressed. The restitution of conjugal rights suit brought by Mary Isaacson against John Isaacson makes a pertinent case study. In July 1776, Mary, of St. Giles parish in Durham, brought the suit against John, of Pudding Chair in Newcastle. The transmitted process book states that they courted from January to May 1769, eloped to Gretna Green, because he was twenty and she was sixteen years-old, and were married in May 1769 in a public house by a 'reputed' minister. They lived at Mary's mother's house in the parish of St Mary-le-Bow, Durham and then at John's Newcastle home. After having three children, John withdrew himself from Mary in December 1773 (he was still only twenty-four, and she twenty).

John claimed that he was neither within the jurisdiction of the court, nor was he Mary's husband. At the beginning of the next term, Mary's Libel was admitted and in March

¹¹ BI, *Gomeldon c. Gomeldon*, 1740.

¹² DDR *Harding c. Harding*, 1742.

¹³ Stretton, *Women Waging Law*, p. 210.

1777 the case was transmitted on appeal by John to York. It remained there for another ten months before John appealed to the Court of Delegates in January 1778. In the records of Durham consistory court there are thirty-eight pieces of correspondence which reveal issues not disclosed in Mary's libel. They were received by Peter Bowlby, John's proctor, from John and various legal advisers.¹⁴ According to John, he and Mary bickered and quarrelled because of their imprudent extravagance and her over-familiarity with his young relation, Henry Creagh Isaacson, a curate. At the end of 1773 Mary left John, taking their two surviving children with her. He did not stop her because he knew that her profligacy would soon send him to gaol.¹⁵ John then consulted with friends about what steps to take to punish the parson and get rid of his wife, but on being informed of the 'Enormous Expence' of proceedings, and that the adulterer was worth nothing, he allowed them to live together without molestation. John later unexpectedly inherited £5000 or £6000 by the death of a distant relation, which he argued caused Mary to bring the restitution suit.

It is apparent from the correspondence that the course of the suit was largely the one that John was determined upon. One letter's address reveals that John was an attorney, which, along with his youth might explain his stubborn independence. Recognising he was no expert in ecclesiastical law, he sought advice from those who were and then ignored it all. His legal advisers agreed that Mary's Libel was admissible, that the defendant was obliged to answer and that the marriage would probably be deemed valid. Mr Johnson and Mr Harris pointed out that the plaintiff would, however, fail to get a decree for restitution if it could be proved that she left uncompelled and had lived thereafter with the young man. Both recommended that John gave an Allegation in place of a Personal Answer and admit the marriage. The former opined that this would

¹⁴ BI, *Isaacson c. Isaacson*, 1776. The transmitted case is held at the Borthwick Institute of Historical Research. The correspondence and some original documents remain in the Durham Diocesan Records. The cases with their replies from Dr Harris in London and Mr Johnson in York are included, having been returned to Bowlby once they were received in September 1776. Other 'expert' opinions were sought from A. Macdonald and L. Dunning of Lincoln's Inn, and Reverend Troward of Gray's Inn.

¹⁵ Apparently she went to the south of England with Creagh, living with him for two years as man and wife, and having one or two children by him.

lead to dismissal, the latter that John could then sue for separation on account of adultery.¹⁶

Yet John steadfastly refused to admit the marriage, both in the hope that it would be impossible for Mary to prove its solemnisation and, primarily, to avoid paying alimony. If it could be proved, he claimed he would apply for a parliamentary divorce. He then refused to answer the Libel until he discovered whether he could obtain a verdict to support an application to parliament for divorce, having no proof of marriage.¹⁷ Instructing Bowlby to deny the marriage until he received information about parliamentary divorce, John asked him to facilitate the delay by appeal. This also had the benefit of saving him from paying alimony. Reverend Troward, of Gray's Inn, London, who was acting on John's behalf, wrote to Bowlby expressing great surprise that John was appealing since such wilful delay was not permissible in Doctors Commons. In his opinion it was a frivolous move since John would still be decreed to answer upon oath and allow alimony until sentence.¹⁸ John simply continued with his appeal to York, and from late 1777 to the Court of Delegates.¹⁹

The final letters reveal that John died unexpectedly in January 1778, aged twenty-nine.²⁰ Even more unexpected is that while the Court of Delegates was issuing letters of inhibition to York, John took Mary back. As a letter from John's old school fellow and

¹⁶ Case and reply by P. Johnson, 7 September 1776; reply by Harris, 10 September 1776.

¹⁷ The October letters show that John was pursuing the possibility of a parliamentary bill via his agent and his partner who were in London. He wondered whether a sentence on behalf of Mary would be sufficient proof of the marriage to proceed with such an action. Macdonald's dubious advice was that the marriage was null and void in England but valid in Scotland. Therefore the case should be dealt with in the Commissary Court of Edinburgh where marriages were dissolved for adultery. Macdonald saw no problem that the adultery was committed in England, and told John to instruct an attorney in Edinburgh. Sensibly, Bowlby contradicted this advice. In the hope of getting a parliamentary divorce John sought proof of Mary's infidelity.

¹⁸ Troward, at Gray's Inn, gave him the requirements for an act of parliament. Sympathetic towards John, he advised that the suit should be proceeded in a 'vindictive' manner.

¹⁹ Documents of inhibition from the Court of Delegates, dated 8 January 1778, are included in the correspondence.

²⁰ Christopher Fawcett, an attorney in Newcastle, wrote to Bowlby on 20 January 1778 recounting 'perhaps One of the most amazing Events you have met with, Your Agent Mr John Isaacson is dead'. John, 'the poor unfortunate man', had died at Easingwold in Yorkshire on 14 January.

clerk commented with wonder, John had died 'with the very woman, to obtain a divorce from whom, he had spent much money'.²¹ John's main motivation in the way he defended himself, re-stated again and again in his letters, was his determination to avoid giving Mary any money, and to limit litigation costs. Ironically, he spent his last hours on earth desperately trying to add a codicil, to provide her with maintenance, to the will he had made during their estrangement that cut her out of his inheritance.²²

The bare bones of the Libel were fact, but the reason for the separation, the decision about the way the suit was defended, its motivation, and the conclusion of the cause could never have been arrived at without the correspondence.²³ If the 'private' side of court cases discloses to poignant effect that court documents could be a bland mask over the writhing face of marital distress, and not simply products of legal professional shaping, this raises further problems that evidence was just as blurred by the ambitions and intentions of litigants themselves. The complexity of personal behaviour that underlies all these causes is not open to reconstruction through the court documents alone. As each piece of the Isaacson jigsaw was assembled, the spouses underwent major character re-writes. Mary evolved from poignant victim to scheming adulteress to prodigal wife; John from cold-hearted deserter to bone-headed skinflint to altruistic husband and father.

The correspondence conveys the complexities of human motivation and explains why a standardised procedure was essential, in order to present a more ordered and logical set of circumstances to those responsible for making a legal decision. The Isaacson case shows that questions of truth and reality are impossibly complex. Parties were not

²¹ The bills were settled on 3 March 1778, from John's estate. (£35 7s. 1d. for costs at York and £23 15s. 2d. for Durham.) He had already paid Bowlby's costs to date before his death (£15).

²² According to Christopher Fawcett, John had made a will at Newcastle and bequeathed his estate in trust for his infant child, so that there was not sixpence for his wife 'whom he had solicited and taken home Sunday gone a Fortnight'. Fawcett explained that John had been in bad health and set out with his wife and child to Bath to recover. A little beyond York he found himself very ill and declared he could not live five days and turned back for Newcastle in order to amend his will.

²³ If John had not died and simply paid Peter Bowlby for his services, his actions would never have been known.

necessarily lying; fact and fiction are very much in the eye of the beholder. The issue is further problematised by the nature and purpose of legal institutions. As far as matrimonial suits were concerned, the church courts' aim was not to uncover the indisputable truth of events. In separation and restitution suits, spouses wanted a solution to their problem; much of the time this did not even necessitate a sentence. When a cause did require the judge's opinion, he decided which version of the truth offered by litigants was most convincing.²⁴

In any adversarial process, the stories told by plaintiff and defendant are oppositional. Basically one spouse had to be innocent, one guilty. In effect, the system depended upon story-telling; a conclusion reached by historical studies and work on modern court-room practices.²⁵ Tim Stretton offers two solutions to dealing with the factual or fictional nature of these records. One is to play God and decide which party was guilty and therefore what 'actually' happened.²⁶ Alternatively, '[b]y focusing on the story-telling, rather than the story-teller or the factual integrity of the story, questions of truth, falsehood, and authorship become less critical.' Using his recommendations, this exploration of marital conflict examines contemporary depictions of appropriate marital behaviour, the way that litigants presented their own and their opponents' actions, the ways in which they dealt with questions of credit and reputation, and the popular stereotypes on which they drew.²⁷

Since it was, theoretically, the judge to whom an argument was meant to appeal, it is feasible that the attitudes expressed in the cause papers reveal most about his values or

²⁴ The official title was vicar general and official principal at York consistory court, but is referred to as judge for ease of use.

²⁵ *Dangers*, pp. 41-3. Story telling allows adjudicators to 'judge the plausibility of a story according to certain structural relations among chosen symbols, not according to direct perception of the actual events in question'. W. L. Bennett and M. S. Feldman, *Reconstructing Reality in the Court Room* (London, 1981), pp. 5-8, 65.

²⁶ For example, Lawrence Stone, *Uncertain Unions and Broken Lives: Marriage and Divorce in England 1660-1857*, 2nd edn (Oxford, 1992). An equally incautious approach is found in Randolph Trumbach, *Sex and the Gender Revolution* (London, 1998), chapters 9-12.

²⁷ Stretton, *Women Waging Law*, p. 19.

prejudices. The out-of-court documents, however, cast doubt upon the exclusivity of such attitudes. Bennett and Feldman argue about modern legal processes that 'the interpretation of stories requires that teller and listener share a set of norms, assumptions and experiences'.²⁸ Similarly, the detailed conjugal complaints were to some extent a cultural 'short-hand' that was easily understood by the judge, proctors, parties and deponents. All held the same views about what constituted such behaviour.

These criteria were rooted within the conjugal vows made during the marriage ceremony. In the solemnisation of matrimony used throughout the period, both husbands and wives promised to love, honour and keep each other, and to forsake all others. Men's requirement to comfort their wives was matched by women's to obey and serve their husbands. There are clear connections between the expectations of mutual affection and respect expressed in records of marital conflict and the promises to love and honour. The husband's commitment to materially provide for his wife reflected his promise to endow her with all his worldly goods and the wife's role as manager of the household was a pragmatic translation of her promise to serve her husband. So a 'bad' spouse was conceptualised as one who failed to match these criteria. These images also mimicked cultural assumptions; since entering the marital home through the legal doorway is much the same as entering marriages dissected in newspapers, journals, advice literature, pamphlets and novels.

The conventions used in all the sources indicate how far cultural models of behaviour were embedded in individual behaviour.²⁹ Still, the shared features of print and practice do not counter the current vogue for illustrating that the two often diverged.³⁰ Culture

²⁸ Bennett and Feldman, *Reconstructing Reality*, pp. 5. See also Kathryn Holmes Snedaker, 'Storytelling in opening statements: framing the argumentation of the trial' in David Ray Papke, *Narrative and the Legal Discourse, A Reader in Storytelling and the Law* (Liverpool, 1991).

²⁹ For this point, see Susan Staves, 'Where is marriage but in texts?: Reading the History of Marriage' in John M. Wallace (ed.), *The Golden and Brazen World, Papers in Literature and History, 1650-1800* (California, 1985), p. 134.

³⁰ Amanda Vickery, 'Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History', *The Historical Journal*, 36, 2 (1993,) 408.

might have been pervasive and thus even internalised, but this is not to say that it was acted upon in straight-forward ways. People used ideologies, or re-interpreted them, to suit their own life-style or situation. This process can be seen in action in the personal writings of Lady Sarah Cowper in the late seventeenth- and early eighteenth-centuries. Anne Kugler discovered that, while accepting the overall validity of the gender system, Sarah 'consulted and reshaped prescription' by reordering passages and ignoring some of their messages. She used the material she read to buttress her claims to wifely rights, to vindicate rather than direct her behaviour. Kugler pertinently describes her, as 'part and parcel of her culture, constructing an identity that asserted her individuality in ways that were valued and respected, within the boundaries, conceptions, and language of the society she inhabited.'³¹ Similarly, prescribed models and stereotypes of spousal behaviour were adopted by northern husbands and wives to defend their own, and attack each other's, behaviour in public. This cultural language did not just belong to the elite, but also to the middling-sort and poorer people. All shared the same conjugal ideals. But as the correspondence reveals, the complaints were not merely symbolic. Even if they were simplistic versions of life, shaped to fit legal structures, they were rooted in specific events and reflect some of the basic issues over which northern couples fought.

II

There is another problem of interpretation, which can arise from a dependence upon the main legal grounds for separation from bed and board, that is cruelty and adultery, which were pleaded in suits before the ecclesiastical courts. The two are categorised in this study as 'primary' complaints. It is simply too easy to be misled by the very noticeable sex division of cruelty and adultery separation suits, with women generally suing for the former and men for the latter. Women (see Table 7) brought all separations on the grounds of cruelty at York and Durham church courts. Seventy-one percent of the matrimonial disputes dealt with by four justices of the peace out of court, between

³¹ Anne Kugler, 'Prescription, culture, and shaping identity: Lady Sarah Cowper (1644-1720)' (University of Michigan, PhD Dissertation, 1994), pp. 4-7, 24, 37, 58-62, 259.

1730 and 1776, concerned wife-beating. It was normally brought to the attention of magistrates by its victims. The abused wife, for example, initiated all Edmund Tew's dealings with violent northern men. Wives initiated half of the total numbers of problem marriages complained about at the quarter sessions. More than 84% of them prosecuted violent husbands (see Tables 8, 9).³² Adultery suits were similarly sex biased. The innocent partner of an unfaithful spouse had the right to claim relief in the ecclesiastical courts whatever their sex, but in practice it was men who took this route.³³ Of the twenty-three separation suits on the grounds of adultery, only two were brought by women, although two more of the accused wives also counter-accused their husbands of infidelity (see Table 7).

Table 7: Breakdown of initiator of instance cases relating to marital problems brought to the York and Durham ecclesiastical courts in the period 1660-1800.³⁴

	<i>Cruelty</i>		<i>Adultery</i>		<i>Restitution</i>		<i>Annulment^(a)</i>		<i>Total</i>	
	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>
	47	100	23	100	24	100	8	100	102	100
Women	47	100	2	8.69	22	91.66	7	87.50	78	76.47
Men	-	-	21	91.30	2	8.33	1	12.50	24	23.52

Does not include instance causes included in miscellaneous category. Includes appeal causes from York, but uses the initial plaintiff.

(a) Contains only those suits that had a plaintiff who was one of the spouses, the other three causes were brought by another family member.

³² Only three of the 171 prosecutions were directed at a female defendant (for causing problems in the marital relationship). One husband was bound-over by the authorities in suspicion about the death of his wife and two husbands were bound-over by the authorities for cruelty to their wives.

³³ Henry C. Coote, *The Practice of the Ecclesiastical Courts* (London, 1847), p. 313.

³⁴ Derived from sampled cases in BI and DDR matrimonial cases.

Table 8. Breakdown of initiator of complaints relating to marital problems to single justices, covering the period 1730 to 1776.³⁵

	<i>Norris</i> (<i>Hackney</i>) 1730-1741	<i>Hunt</i> (<i>Wiltshire</i>) 1744-1749	<i>Tew</i> (<i>Durham</i>) 1750-1764	<i>Wyatt</i> (<i>Surrey</i>) 1767-1776
Women	21	10	16	4
Overseer	1	1	1	4
Men	0	0	0	0
Unknown (a)	0	0	8	3
<i>Total</i>	22	11	25	11

(a) Edmund Tew dealt with several cases in which a defendant was bound over for causing trouble between a married couple, but it is unknown if the prosecution was brought by both spouses or one only.

Table 9: Breakdown of initiator of cases relating to marital problems that came before the North Riding, Northumberland, Newcastle and Durham courts of quarter sessions, 1660-1800.³⁶

	<i>N</i>	<i>%</i>
	337	100
Initiated by wife	171	50.74
Initiated by husband(a)	14	4.15
Initiated by authorities	108	32.05
Unknown	14	4.15
Miscellaneous (b)	30	8.90

(a) Includes five husbands who bound-over their wives for beating them or threatening to do so. Also four husbands complained about their wives' adultery, two about someone who was harbouring their wives and one man accused his wife of trying to poison him.

(b) Where a marital problem was not the primary cause of the case, which was initiated by the authority or someone other than the husband or wife.

This sexual division is assumed by some historians to provide wider insights into marriage in general. Differences between the structures of separation suits, for example, have been identified. Susan Amussen argues that sixteenth- and seventeenth-century adultery cases brought by men against their wives were shorter, reflecting little of the marriage before the infidelity. Conversely, those brought by battered women focused on the whole marriage outside the incidents of cruelty.³⁷ The deduction is that in order to

³⁵ Taken from: Edmund Tew's journal, DRO D/X 730/1, unpaginated; Paley (ed.), *Justice in Eighteenth Century Hackney: The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book* (London, 1991); Elizabeth Silverthorne (ed.), *Deposition Book of Richard Wyatt, JP, 1767-1776*, (1978); Elizabeth Crittal (ed.), *The Justicing Notebook of William Hunt, JP, 1744-1749*, (Stoke-on-Trent, 1981).

³⁶ Derived from all references to marital problems in: NYCRO QSB/1685-1800, QSM/1703-1800, DC/SCB VI 2/1/1/1-4 and DC/RMB III 3/1/3; DRO Q/S/OB 5-16; TWAS QS/NC/1/2-8; NRO QSB 1-87 and QSO 1-15.

³⁷ Susan D. Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford, 1988), p 128.

prove their husbands' failure, wives had to muster all sorts of additional evidence to that of violence. Husbands merely had to prove one incident of their wives' adultery. Ironically, however, the language was not strictly gendered, since adultery suits brought by women against their husbands were the same in format and language as those brought by men. In both types of suit one article was set aside to describe the spouse as having a lewd and vicious temper, not having the fear of God before their eyes, and being seduced by the Devil to commit the sin of adultery.³⁸ Similarly, husbands who accused their wives of violence used the same language as battered women.³⁹ All defendants were described as acting against the conjugal vows.

In fact, both cruelty and adultery suits had the potential to provide a lengthy description of the marriage to date. Admittedly, some adultery cases did focus only on a wife's illicit behaviour. But, generally speaking, these were initiated after a lengthy separation, which the adultery post-dated. They were probably less easy to defend because the wife was living with a lover and, therefore, unlikely to go into depth about the marriage. Those where wives were accused of adultery within wedlock, and for that reason turned out, were often longer, and sometimes the most defended.⁴⁰ The latter were likely to provide similar descriptions to those in cruelty suits of a 'total' marriage. Similarly, some cruelty separations were brief. Initiated by a wife as a warning to an abusive husband, or to force agreement on maintenance, and abandoned if their aim was achieved, they provide little emphasis on the unions outside the violence. Disparities between suits are probably due more to the tendency of men, as opposed to women, to defend themselves. The gender inequalities in action were various economic handicaps that made it financially difficult for married women to defend themselves, rather than ideological double-standards about marriage.

³⁸ For example BI, *Seardison c Seardison*, 1785.

³⁹ BI, *Currie c. Currie*, 1729.

⁴⁰ For an example of the former see BI, *Siddall c. Siddall*, 1708; BI, *Wentworth c. Wentworth*, 1756. For the latter see BI, *Manwaring c. Manwaring*, 1761; BI, *Surtees c. Surtees*, 1745.

These points are important because of the implications they have for the most extreme hypothesis based in part upon the sex division of separation suits, that men and women possessed entirely different understandings of marriage. From her work on defamation and separation suits that came before the London Consistory Courts in the sixteenth- and seventeenth-centuries, Laura Gowing contends that 'what shaped marriage was not so much its context in society and the state, as a gender order based on sexual morals'. Thus, to her, the sex division of the separation suits illustrates that 'only women could be penalized for extramarital sex and only men could be guilty of violence'. What is more, this was 'a gender order that worked from a central definition of the incommensurability of women's and men's sexual morals'.⁴¹

Significantly, this theory of total gender difference, in both experience and perception, simply collapses when it is tested by studying the other marital grievances contained within a variety of records of marital conflict. They are categorised in this study as 'secondary' grievances (see Table 10). Like 'primary' complaints, they were attested to by deponents when providing a character snap-shot of wives and husbands. Crucially, they arise in the more informative quarter sessions documents and newspaper adverts, as well as in the ecclesiastical court papers.⁴²

⁴¹ *Dangers*, pp 180, 275, 229-31.

⁴² A study of English divorce for cruelty between 1938 and 1970 notes that modern courts required that 'conduct complained of be considered in relationship to the marriage as a whole, and thus while violence is strongly featured in petitions, the citation of other complaints has the effect of locating this in a context of, say, drunkenness, improvidence, or unacceptable conduct.' The authors point out that this 'multiple-complaint pattern' makes it difficult to be sure which complaint was decisive as far as the court was concerned. Robert Chester and Jane Streather, 'Cruelty in English Divorce: Some Empirical Findings', *Journal of Marriage & Family*, 34 (1972) p. 710.

Table 10: Categories of complaints made by both spouses about marriage in 94 cruelty and adultery separation suits and restitution suits at Durham and York ecclesiastical courts (not including the primary allegation of male violence or female adultery).

<i>Categories of complaints</i>	<i>Number of complaints 154</i>	<i>Complaints as a % of 94 suits % 100</i>
Refusal to provide ^(a)	36	38.29
Financial issue ^(b)	18	19.14
Wife conveying away goods	16	17.02
Extravagant wife	15	15.95
Male adultery	14	14.89
No complaint, or other grievance ^(c)	13	13.82
Male drinking	11	11.70
Denial or inversion of household government	11	11.70
Wife accused of threat, or actual, physical violence	7	7.44
Husband accused of 'tyrannical' behaviour	6	6.38
Wife accused of threat, or attempt, to poison husband	4	4.25
Jealousy about wife's behaviour	3	3.19

(a) Includes denial of maintenance, of law of agency, of necessities such as food, drink and clothing, lack of provision during lying-in, and providing for mistress instead of wife.

(b) Quarrel over real or personal property.

(c) 'Other' complaints include bigamy and problems caused by the wife's brother.

These secondary complaints reveal a much more complicated picture of marriage than that built upon the legal requirements of proof and sexual division of separation suits. Excluding the primary allegation in matrimonial cases, the complaints (where they were specified) at York and Durham ecclesiastical courts fall into twelve categories; a combination of which could be stated in one cause. At first glance they can be broken down into female and male complaints. A husband's refusal to provide and his denial of his wife's right to manage her household, and/or his inversion of household government, were often alleged in separate articles of women's cruelty Libels, or as female defences in adultery and restitution suits (as well as in Positions Additional and Allegations). So too were male adultery, drunkenness and jealousy. Tyrannical male behaviour was most often complained about in the plaintiff's follow-up cause papers to the Libel. Grouses about wives conveying away goods from their husbands or the marital home, female extravagancy, and female violence were made by husbands in adultery suits, and by

those accused of wife-beating, or as a defence in restitution suits. Finally, both sexes alluded to disputes over personal or real property.

Granted that men and women seem to make slightly different complaints, they, nevertheless, were fundamentally similar. Both focused upon concerns about the domestic economy and the allocation, management and ownership of material resources and property. By looking past the two grounds for separation, this range of evidence, expressed throughout the various sources, demonstrates the artificiality of a thesis of antithetical male and female marital experience.

CHAPTER FOUR

'Matrimonial Government'¹: the politics of gender.

ALL men are gods, pert *Sally* cries,
Till they are wed, then devils fell;
Madam, they'd need, old *Blunt* replies,
Be devils, that must live in *Hell*.²

I

Work on wife-beating invariably seeks to establish its material causes within the wider context of patriarchy.³ Usually these pivot on the household and domestic economy, and the failure of women to carry out male orders through intransigence or incompetence. Yet it is impossible to establish causality. For one thing, although the incidents of cruelty may well have occurred, their presentation in cause papers was shaped by the need to provide evidence of violence that satisfied legal requirements.⁴ The most detailed descriptions given by battered wives in separation suits on the grounds of cruelty applied general terms such as beating, striking, bunching [punching], nipping and kicking.⁵ More specific actions were included, such as a husband tearing his wife's clothes or hair, dragging her about the floor, throwing her downstairs, or throwing household items at her (mugs, dishes and sometimes hot coal). Many incidents involved the use of weapons such as whips or sticks, as well as bodily ones of fists and feet, and threats issued while brandishing a sword, gun, or pen-knife. Occasionally, attempted strangling or suffocation was reported.⁶ What would be categorised today as mental cruelty was outlined alongside physical violence. It usually took the form of terrorising

¹ 'Mary Rulewell's' comment that where marriage is concerned, there is a difference between theory and practice. *GM*, vol. 5, 1735, p. 16.

² *GM*, vol. 11, 1741, p. 274.

³ For example, Margaret Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth-Century London', *Gender & History*, 4 (1992), 16; Leah Leneman, '"A tyrant and tormentor": violence against wives in eighteenth- and early nineteenth-century Scotland', *Continuity and Change*, 12, 1 (1997), 39-42.

⁴ Usually, the Libel's first article set out date and proof of marriage, consummation and cohabitation. A character description followed, differing only according to whether it was an adultery or cruelty case. The next article of the Libel provided the general dates, location and type of marital offence. For a representative Libel, see *BI*, *Rogers c. Rogers*, 1793.

⁵ Explicit, lengthy details of each bout of violence are less common. When they exist, their frenetic, brutal quality serve to underscore the husband's failure of reason. See *DDR*, *Smith c. Smith*, 1743.

⁶ The former seems to have been connected to female dress because the 'handkerchief' women wore round their neck, covering the top of their dress, was sometimes grabbed by a husband and tightened in a strangling motion.

and 'menacing' wives, or confining them.⁷ Essentially, all of these fulfilled the legal requirements of canon law, which defined cruelty as a deadly hatred, evidenced by violence causing danger to life, limb or health.⁸ Until the end of the eighteenth-century, violence had to be shown to be extreme, repetitive and to prevent the wife from carrying out her normal lifestyle.⁹ Most detail went into enumerating the bruises and bloody physical signs of the blows. Events that were selected were determined by whether they had witnesses, either to the abuse or to its marks.

Detailed accounts of violence that survive in quarter sessions bundles are similar, in that the goal of most prosecutors was to show that the abuse was without reason, not caused by provocation. As such, descriptions in court documents simply state at what point an incident began, not its reason for being. Often without context, the violence seems to be suddenly dropped upon the battered women without warning. Cruelty separation suits illustrate that male physical abuse was connected with a background of the breakdown of household management, with male drunkenness and male tyranny (see Table 10, p. 56). But neither general nor specific incidents were used by the prosecutors or defenders as explicit causes. It is historians who make the link between the action that the wife was undertaking and the violence. They frequently reconstruct causality from the women's complaints about clashes over household government and material resources.¹⁰ Importantly, however, these were in separate articles from those containing violence and were intended to show that husbands were totally inadequate. Deponents did note the context of quarrels. In 1721, William Masterson often 'heard ... [John Laughton] find fault with any thing at table he thought amiss and Damn and Sweare' at his wife.¹¹

⁷ See DDR, *Greenwell c. Greenwell* 1773.

⁸ J. M. Biggs, *The Concept of Matrimonial Cruelty* (London, 1962), p. 10; H. C. Coote, *The Practice of the Ecclesiastical Courts* (London, 1847), p. 349.

⁹ One violent outburst in a quarrel did not necessarily endanger life or health. Repeated incidents made it imperative to protect the future health of the wife. Biggs, *Matrimonial Cruelty*, pp. 62-3.

¹⁰ Robert B. Shoemaker, *Gender in English Society, 1650-1850: The emergence of separate spheres?* (London, 1998), p. 105. The only direct links between a problem and resulting maltreatment were made between male and female adultery, male drunkenness, and in two cases where men treated their wives badly in order to get them to sign money or property across to them.

¹¹ BI, *Laughton c. Laughton*, 1721.

Yet it still remains unclear whether this was the cause of abuse, or one of its expressions. Theories of causality are problematic because, in claiming that husbands beat their wives for infractions or disobedience, the inference follows that the lives of most spouses were coloured by this potential.¹²

II

Tracing power relationships from records of violence is difficult, because the adversarial nature of church court cause papers reveals two types of wife: one submissive and the other undutiful. To some extent this was a function of legal necessities. Plaintiff and defendant needed to claim to be ideal, while attacking the other's character. Women portrayed themselves as the 'ideal' wife revealed through scripture, prescription and several forms of popular print. Modest and virtuous in life and conversation, she was mild, affable and of obliging temper; she behaved herself with duty as became a wife, and endeavoured by all means to content her husband and avoid provoking him.¹³ Conversely, men who defended themselves portrayed their wives as the ideal's antithesis: mouthy, ill tempered, un-civil and undutiful. Equally, husbands had two images; they were both cruel, wicked, and passionate, or obliging, kind, loving and respectful. This duality was a cultural commonplace and could lead its unwary user into difficulties. Reporting on the prosecution of a wife-beater at Chelmsford Assizes in 1764, *The Newcastle Chronicle* humorously described the accused's counsel's clumsy defence. He referred to:

the repeated aggravations [the accused] had received from his wife, who, he said, was like the rest of her sex, *who were half of them devils*; but, on recollecting himself, and surveying a great number of

¹² Thus it is suggested that 'women must have expected to be struck at some time by their husbands'. Roderick Phillips, *Untying the Knot. A short history of divorce* (Cambridge, 1991), p. 102.

¹³ See BI, *Spence c. Spence*, 1782.

Ladies in court, said the other half were *Angels*, many of whom were in court; which occasioned no small diversion to the audience.¹⁴

The Janus-faced wife of separation cause papers has resulted in two interpretations of marital power relationships. One supposes that women were exceptionally submissive. Lawrence Stone declares in *Road to Divorce* that, 'wives were infinitely more submissive in the past, thanks to the strength of patriarchal values' and as a consequence, lived with 'a sense of fear, guilt and helplessness, amounting in some cases to masochism'.¹⁵ The other, which contends that male verbal and physical abuse was a tool used to reassert power in marriage, accepts that some women were assertive.¹⁶ But, effectively, it suggests that challenging behaviour by females was corrected because it was considered by contemporaries to be deviant. Both models are unsatisfactory.

The deponents for Grace Allenson, in 1675, did indeed agree that she was 'very submissive, dutiful and respective' to her husband.¹⁷ Nonetheless, the position of wives can be explored through records of wife-beating without falling into the trap of either constructing them as victims or making them responsible for the violence. Wives were not passive punch-bags, although they could be compliant. It is well known that women manipulated the language of female weakness in their dealings with men in general. A letter from Mary Manwaring to her proctor, Mr Clough, dated 13 May 1763, survives from the separation suit mounted against her for adultery in 1761, a cause which endured for several years and was appealed from Chester to York. Her business-like

¹⁴ *The Newcastle Chronicle*, 31 March 1764, p. 2. The ambivalence of this approach underscores the reluctance to use female provocation as a defence, see pp. 73-6.

¹⁵ *Divorce*, pp. 199, 201.

¹⁶ Nancy Tomes, 'A "Torrent of Abuse": crimes of violence between working-class men and women in London, 1840-1875', *Journal of Social History*, XI, 3 (1978), 332, 338. She suggests, however, that this shows male insecurity rather than total dominance over women. Leneman, "'tyrant'", p. 40; Lynn Abrams, 'Whores, Whore-Chasers, and Swine: The regulation of sexuality and the restoration of order in the nineteenth century German divorce court', *Journal of Family History*, 21, 3 (1996), 267-8. The theory that patriarchal power is the fulcrum for violence in modern society is analysed in B. Fawcett, B. Featherstone, J. Hearn, and C. Toft, *Violence and Gender Relations: Theories and Interventions*, (London, 1996), p. 31.

¹⁷ B1, *Allenson c. Allenson*, 1675, deposition of Frances Turner.

letter concisely outlined various problems with the evidence from her alleged lover and several deponents. She also detailed her work in organising the collection of information to be used in excepting against witnesses. Yet she ended plaintively, if unconvincingly, declaring that 'ye task is hard on a poor helpless Ill used Woman'.¹⁸

Of course, the relationship between wives and their husbands was potentially more restrictive. Catherine Ettrick admitted in 1765,

that she ... has often for the sake of peace and only to please Mr Ettrick when he was in a passion or out of humour been obliged to declare that she had not any objections to many things which yet she in her own Conscience did and must know and think were Cruel to the highest Degree and as she believes every one else in the like case would have thought.¹⁹

Still, as Linda Pollock observes: 'We should ... understand the subtle distinction between internalised subordination and protestations of submission; dependants count on the power of abject submission to restore them to favour, rather than necessarily following their father's [or husband's] orders'.²⁰ So for example, Elizabeth Laughton, who sued her husband John, of York, for separation in 1721, was described as sending for him in 'the most submissive and entreating manner' to come to her and be reconciled, after he had refused to talk to her for a fortnight. When John entered the lying-in chamber, Elizabeth who was still weak in child-bed, asked her friend to lift her up from the bed and then 'Im[m]ediately (upon her knees) asked her said Husbands pardon'.²¹ Depositions reveal that John and Elizabeth had quarrelled about the name to give their baby. During John's absence on business, she had baptised the baby with a name of which he disapproved. She had to placate her husband, but she got what she wanted.

¹⁸ BI, *Manwaring c. Manwaring*, 1761.

¹⁹ BI, *Ettrick c. Ettrick*, 1765, C.P. 1/1503, Answers to William Ettrick's Allegation, no. 10.

²⁰ Linda Pollock, 'Rethinking Patriarchy and the Family in Seventeenth-Century England', *Journal of Family History*, 23, 1 (1998), 5.

²¹ BI, *Laughton c. Laughton*, 1721.

Selective and timely deference was one thing, inferiority another. Even didactic texts did not demand female debasement. The *Book of Homilies* recognised the difficulties of marriage for women 'in that they must relinquish the liberty of their owne rule'.²² George Savile, in 1688, accepted that obey 'is an ungentle word, and less easie to be digested'.²³ Women were not expected to simply swallow inequality, they had it rationalised and justified to them. William Fleetwood, the Bishop of Ely, in his printed sermons dealing with the relative duties of household members, published in 1716, based his explanation on a biblical passage. This, he observed, contained the effects of submission, not just the command, 'which is a great Encouragement to the fulfilling it; for when a Law carries its Reason with it, it is more likely to find a good Acceptance and Compliance'.²⁴ By choosing to behave in the proposed way, a wife would bring her husband into the ways of God, or if he was already a believer, improve his character. Cleverly, she was handed her own responsibility, even power, as the corollary of her choice to be subordinate.²⁵

This was especially so in the eighteenth-century motif of female strength lying in weakness. In 1688 George Savile informed his female reader, 'You have it in your power not only to free your selves, but to subdue your Masters, and without violence throw both their *Natural* and *Legal Authority* at your Feet.' Later he pointed out, 'You have more strength in your *Looks*, than we have in our *Laws*, and more power by your

²² *Book of Homilies, The second Tome of Homilies, of such matters As were Promised and Entitled in the former part of Homilies* (London, 1633), pp. 241-4.

²³ Halifax, *The Lady's New Year's Gift: or, Advice to a Daughter* (1688) in Vivien Jones (ed.), *Women in the Eighteenth Century, Constructions of Femininity* (London, 1990), p. 18.

²⁴ I Peter III, Verses 1, 2, 'Ye Wives, be in Subjection to your own Husbands' that if any obey not the Word, they also may, without the Word, be won by the Conversation of the Wives: While they behold their chaste Conversation coupled with Fear'. William Fleetwood, *The relative duties of parents and children, husbands and wives, masters and servants; consider'd in sixteen practical discourses with sermons upon the case of self-murder*, 2nd edn. (London, 1716), pp. 131-49. See also Francois Bruys, *The Art of Knowing Women: or, the Female Sex Dissected, in a faithful representation of their virtues and vices, written in French by the Chevalier Plante-amour, published at the Hague, 1729. Now faithfully made English with improvements* (London, 1730), p. 70; *The Ladies Library, written by a Lady* (3 vols.) Published by Sir Richard Steele, 6th edn (London, 1714), pp. 37-40.

²⁵ Fleetwood applied contract theory to underline female choice. To him, law, custom, and female privileges then further ameliorated this contractual relationship.

Tears, than we have by our *Arguments*.²⁶ In 1745, *The Gentleman's Magazine* printed a poem called 'The Choice, Or the Model of a Wife'. The author's ideal wife, in addition to being virtuous, modest, wise and good natured, would be adept at appeasing her husband. Through her 'winning art', 'When *most* she rules him *seems* t'obey'.²⁷ By 1759 Thomas Marriott had reached the apotheosis of this style of advice. His manipulative women flattered their husbands into compliance:

Hence ev'ry Wife her Husband must obey,
 She, by Compliance, can her Ruler sway;
 Strong, without Strength, she triumphs o'er the Heart,
 What Nature gives not, she acquires by Art;
 Preeminence, herself debasing gains,
 By yielding conquers, and by serving reigns.²⁸

By mid-century the motive for this behaviour was up-front. For instance, in 1756, Eliza Haywood recommended that a wife advise her husband about managing his fortune, but 'disguis'd under the softer and more humble appearance of perswasion', because otherwise he may think his prerogative infringed upon.²⁹ A strand of criticism consistently highlighted the hypocrisy of this instruction. In 1735, in *The Gentleman's Magazine*, 'Mary Rulewell' argued that its advocates were trying 'to make Wives blindly submit to their Husbands, for fear the Good Man shou'd *take Pett*'. In the same volume a letter from 'Martha Love-Rule' acknowledged that some wives made obedience so engaging that their husbands were 'reciprocally Dutiful'. Pertinently, she observed that

²⁶ *Lady's New Year's Gift* in Jones, *Women*, pp. 18-21.

²⁷ *GM*, vol. 15, June 1745, p 327. The message was ubiquitous. See *The Newcastle Intelligencer*, 31 December 1755, p. 4; Steele, *Ladies Library*, p. 50; *The Matrimonial Preceptor. A collection of examples and precepts relating to the married state, from the most celebrated writers ancient and modern* (London, 1755), pp. 163-5.

²⁸ Thomas Marriott, *Female Conduct: being an essay on the art of pleasing. To be practised by the fair sex, before, and after marriage. A poem in two books* (London, 1759), pp. 18, 24, 28.

²⁹ A great deal of Haywood's advice depended upon the strategic manoeuvring of men. Nonetheless, after repeated warnings that wives must not give up trying to reform their husbands, she confided that if all this failed the wife must turn to separation. (Haywood herself was separated.) *The Wife, by Mira, one of the Authors of The Female Spectator, and Epistles of Ladies* (London, 1756), pp. 102-3, 276-278.

such manipulation was a disagreeable mixture of liberty and slavery, obedience and government.³⁰

III

The alternative 'type' of wife found in separation suits was the 'disobliging' one, the term most favoured by contemporaries. Like husbands, disobliging wives in separation suits were verbally abusive. Verbal abuse, or bitter words, was alleged in all cruelty separations and often defied gender boundaries.³¹ Anne Fletcher's husband would 'belch out against her imp[re]ca[ti]ons'; Charles Allenson called Grace 'filthy and opprobrious names' throughout their sixteen years of marriage.³² Anne Shaw, according to her husband, 'frequently called him Bastard, foole, Rogue, beggerly Rogue, murdering Rogue pocky rotten whoremasterly Rogue, and said to him Hange thee for a Rogue'.³³ Wives vehemently and loudly wished that their husband was dead. A common claim was that a wife urged her husband to beat her so that if he went too far and killed her, she would at least have the satisfaction that he would be executed. As well as hoping that her husband would be hanged, Anne Shaw desired 'that his hands might rott off the next time he touched her'.³⁴

Women also pushed, spat and ripped clothing. One man described how his wife spat in his face and scratched it, so that he was forced to wear patches and keep to his bed for a week or more.³⁵ A servant deposed in 1697 that she saw Elizabeth Pighells get hold of her husband, a rector, by the collar, tear his cassock, and 'spitt towards him in contempt and scorne of him'. Mary Jenkins reported that when she was a servant to Elizabeth and

³⁰ *GM*, vol. 5, January 1735, pp. 15-16.; *ibid.*, October 1735, pp. 594-5. Also see 'Rules and Maxims for promoting Matrimonial Happiness. Addressed to all the Widows, Wives and Spinsters in England', *The Newcastle Journal*, 16-23 August 1760, p. 2.

³¹ Also alleged when cruelty was pleaded as a counter-action in adultery or restitution causes.

³² *BI*, *Fletcher c. Fletcher*, 1687; *BI*, *Allenson c. Allenson*, 1675.

³³ *BI*, *Shaw c. Shaw*, 1696.

³⁴ *ibid.* According to Tomes, "'Torrent'", p. 332, female verbal abuse implied female insubordination and thus resulted in violence. But if this was so obvious, why did wives risk violence? It is more plausible to see the mutual use of verbal abuse as a struggle rather than a female rebellion.

³⁵ *BI*, *Allenson c. Allenson*, 1675.

John, she often heard Elizabeth curse him, pull his wig off, and 'bite him by the shoulder'.³⁶ Of course, in print the seventeenth-century scold used her tongue, hands, nails and teeth as weapons.³⁷ Yet the image was not unambiguously gendered in these suits, since husbands were invariably depicted using the same behaviour. In the 1760s, William Ettrick often tried to spit into his wife's and children's mouths.³⁸ Esther Bowes' husband went further, in the town street of Walkerfield, he took up 'a turd and put itt into her Mouth saying Dam thee Bitch Ile use thee as I woud doe the Devil'.³⁹ Both spouses were shown deploying malevolent gestures calculated to humiliate the spousal opponent.

Claiming a wife was aggressive was a balancing act, since popular literature made a connection between violent women and weak men. In 1736 an epigram was printed in *The Gentleman's Magazine*:

BEN's wife having beat him; his friend *Will* cries, *Nan!*
Are you not asham'd, thus to fight with a man?
She reply'd; you poor ignorant son of a wh--re!
I'll swear I've not *seen* one this hour and more.⁴⁰

Despite this, the northern records show that women, as well as men, were accused of being violent, particularly up to the mid-eighteenth century.⁴¹ It is true that wife-beating was the most common form of marital difficulty that came before the courts (see Tables 7, 8 and 9, pp. 52-3). Female abuse against husbands made up a much smaller proportion of total marital violence than that perpetrated by men against their wives. Nearly 12% of separation and restitution suits alleged that physical abuse was threatened and committed by women (see Table 10, p. 56). But around 53% of the same church court suits alleged male ill-usage. The difference in proportion was more

³⁶ BI, *Pighells c. Pighells*, 1697, Mary Cross's deposition.

³⁷ See, *Poor Robin's True Character of a Scold Or the Shrews Looking-glass* (London, 1678), p. 5.

³⁸ BI, *Ettrick c. Ettrick*, 1765.

³⁹ DDR, *Bowes c. Bowes*, 1718.

⁴⁰ GM, vol. 6, 1736, p. 109.

⁴¹ *Dangers*, pp. 180, 229-30. References to violent wives consistently arise in other sources. For example, Rev. John Thomlinson's diary in J. C. Hodgson (ed.), *Six North Country Diaries*, The Surtees Society, vol. 118, (Durham, 1910), p. 107.

pronounced in the sampled quarter sessions, where only six women were bound-over by their husbands for violence, in comparison with 144 husbands prosecuted by their wives.⁴² Murder followed the same pattern. A sampling of the Newcastle and York newspapers revealed forty-eight references to spouse murders or attempted murders. Twenty-seven percent of them were by wives, and 73% by husbands.⁴³ Numerically biased, but not insignificant, such incidents of women's violence are useful to consider attitudes to female aggression.⁴⁴

The archetypal sort of violence associated with women, even today, is poisoning. This is because it is covert, sinister, and non-confrontational.⁴⁵ Whereas only two of the wife-killers reported in the press used poison, most of the husband-murderers, who featured in the same press, used this method.⁴⁶ Women did take advantage of their husbands' diminished strength due to sleep or illness, but the separation suits reveal that their actions were not always secretive. When William Idelle was ill in bed, in the first decade of the eighteenth-century, his wife beat him on his legs with a fire shovel. In 1727 James Currie described his wife's treatment of him when he was in bed as abusive and insupportable. When,

He ... has earnestly desired peace and quiet that He might enjoy his
natural rest, She wou'd then disturb him the more, and whensoever
She found him inclined or disposed to Sleep, She wou'd suddenly

⁴² Female abuse was revealed incidentally during the course of a church court matrimonial suit, but wives who came before the quarter sessions jurisdictions had to have been prosecuted by their husbands; much less likely given cultural tropes about relative female and masculine strength. See, J. Sharpe, 'Domestic Homicide in Early Modern England', *The Historical Journal*, 24 (1981), 32.

⁴³ In Essex, between 1560 and 1709, wives as murder victims outnumbered husbands by roughly two to one. Sharpe, 'Domestic Homicide', pp. 34-6. Of 1000 spouse killings between 1830 and 1900, 90% were committed by men. George Robb, 'Circe in Crinoline: Domestic Poisonings in Victorian England', *Journal of Family History*, 22, 2 (1997), 176-7. Husbands were guilty of murder, wives of petty treason. Petty treason was the murder of one's superior, therefore male servants could also be guilty of petty treason for killing their master (or mistress). Men who were convicted of petty treason were hanged, women were burned.

⁴⁴ In contrast to actual figures, popular literature was equally, or more, interested in wives who killed their husbands. See Sharpe, 'Domestic Homicide', p. 41; Frances Dolan, *Dangerous Familiars, Representations of Domestic Crime in England, 1550-1700* (New York, 1994), pp. 4, 26, 59.

⁴⁵ Dolan, *Dangerous Familiars*, p. 30.

⁴⁶ Husbands who appeared in the press tended to kill their wives in the midst of a fight. They struck out with whatever weapon came to hand. In the separation suits only one wife accused her husband of poisoning her. BI, *More c. More*, 1719. York dismissed the case.

grasp her Hands and arms around his neck and throat and setting her Knees to his back pull with such violence as if she had designed to strangle or choak or else to break the Back of ...[him].⁴⁷

Several of the wives reported in the press, used weapons to attack their husbands.⁴⁸ There was even one sex-specific form of savagery by women against men. Often phrased euphemistically, these wives hacked off their husbands' penises. Thus in 1744, one wife applied a razor to her sleeping husband, to ensure he would never again be adulterous.⁴⁹

Women were also aggressive when their husband's strength was not reduced.⁵⁰ William Eagle of Tollerton, Yorkshire, was bound-over by his wife in December 1770. He was continued in his recognizance until the Easter sessions. The following year, in June 1772, his wife, Elizabeth, was committed to York Castle along with her two sisters for William's murder. Elizabeth and one sister had followed William, when he went to milk the cows, and beat and bruised him so that he had to be carried home. The next day, as *The Newcastle Journal* explained, 'he received from his wife and her two sisters (none else being with him) a large wound on the forehead, and another on the back part of his head, of which he died'. Conceivably, William failed to stop ill-treating his wife in the fourteen months or so between his quarter sessions appearance and his death, so that Elizabeth cracked and halted the abuse through violence.⁵¹

⁴⁷ BI, *Idelle c. Idelle*, 1706, C.P. I/241, William's allegation; also C.P. I/154, John Idell's [sic] deposition. BI, *Currie c. Currie*, 1729. See *GM* for other female poisoners, for example, vol. 1, 1731, p. 492; vol. 2, 1732, p. 676; vol. 5, 1735, p. 386; vol. 35, 1765, p. 243.

⁴⁸ Two attempted to kill their husband with a knife, another hit him. For other husband murderers, see M. A. Richardson, *The Local Historian's Table Book* (Newcastle-upon-Tyne, 1861), p. 160; James Raine (ed.), *Depositions from the Castle of York*, Surtees Society, vol. 40 (Durham, 1861), p. 185.

⁴⁹ He died. *The Newcastle Courant*, 25 February-3 March 1744. A few women melted pewter and poured it into their husbands' ears to kill them, see *Newcastle Journal*, 24 June 1780, p. 4.

⁵⁰ Elizabeth Speight was indicted in 1795 and found guilty of committing an assault and battery upon her husband. NYCRO DC/SCB VI 2/1/1/4, film 0451. The sentence was that Elizabeth be imprisoned in the house of correction until the next session, unless she find two sureties to be bound at £20 each for her good behaviour, or unless her husband consented to have her discharged without such liberties.

⁵¹ NYCRO QSB/1771, film 004481; QSM/1771, pp. 50-1. *Newcastle Journal*, 20-27 June 1772, p. 3.

Plainly, female violence could be confrontational, particularly in its less extreme forms.⁵² Jane Currie attacked James Currie when he was in good health and not trying to sleep. James stated that when he rebuked her for carrying off clothes and goods from the house, 'She struck him upon the Eye with her folded Fists, which caused him such pain that he feared his Eye had been struck out'. One deponent remembered seeing the Curries out riding, two days after their marriage. Jane's pillion broke and James came to help mend it, but as he came near she called him a 'Scotch Curry-comb' and told him he should not touch anything that belonged to her. When he got up to her she kicked him on the face.⁵³ In 1765, Charles Allison claimed that his wife often hit him with a poker and a brush. On one occasion she left his hand swollen for a week, and on another struck him on the face leaving redness that prevented him from attending church out of shame.⁵⁴ When two servants for Reverend Shanks of Lesbury indicted him for cruelty against them, one described a violent incident between Shanks and his wife. Interestingly, in an account that did not need to stress female lack of provocation or deference, the couple was presented as well-matched in their aggression.⁵⁵

Perhaps the awareness that women were physically aggressive meant that their threats were taken seriously.⁵⁶ At the quarter sessions wives were mostly bound-over because they had threatened to kill their husband and, often, to burn down the marital home. For instance, in November, 1744, Thomas Thwaites got surety of the peace against his wife, after she threatened to run him through with a fire poker and on another occasion swore

⁵² Robert Dobby claimed that his wife and her mother had struck at him with no cause. BI, *Dobby c. Dobby*, 1719. Elizabeth Idelle brought out a sword and challenged her husband to a fight. BI, *Idelle c. Idelle*, 1706. Sir Cuthbert Shafto alleged that he was attacked by Mary Shafto who struck him on the face, kicked him on the private parts, and tried to strangle him with his neckcloth. He even gave this as the reason for going to Scotland, when he tried to avoid Mary's citation to appear and answer her suit for separation. BI, *Shafto c. Shafto*, 1797.

⁵³ BI, *Currie c. Currie*, 1729. The latter comes from John Grainger's deposition.

⁵⁴ DDR *Allison c. Allison*, 1765.

⁵⁵ NRO QSB 58, Epiphany 1723, fol. 85.

⁵⁶ Conversely, it is suggested that printed representations of domestic conflict and violent women receded from the centre of popular culture during the eighteenth-century. Dolan, *Dangerous Familiars*, p. 18.

she would give him a bloody throat.⁵⁷ Charles Pearson of York, who advertised that he would not pay any debts contracted by his wife in 1756, observed that they had separated, 'in order to prevent, perhaps, shedding each others Blood; for as she had many Times threatned [sic] me, and once made an Attempt, I have great Reason to be afraid, if I was to give her Opportunity'.⁵⁸ Robert Northend defended himself against a restitution suit brought by Hannah Northend, who had been Robert's father's servant, in 1702 by maintaining that he had unwillingly married her because of her intimidation. For instance, on St James's Day, Hannah had cut his forehead with a penknife declaring 'she would cutt him as small as flesh to the pott in case he would not marry her'.⁵⁹

In short, a range of disobliging female behaviour was recognised, from minor to extreme levels. The latter, no doubt, was considered to be deviant. But female disobedience was not as comprehensively reviled, shunned or dismissed as a joke by contemporaries, in the late seventeenth- and eighteenth-centuries, as some historians suggest.⁶⁰ By the end of the period, extenuating circumstances existed for some violence. For example, wives who had suffered a history of abuse from their husbands were thought to be justified when they retaliated with violence.⁶¹ *The Newcastle Courant*, in 1799, reported that a Derbyshire woman who had frequently been beaten by her husband, eventually took revenge. While he was asleep she sewed him up in the bed-clothes and then,

thrashed him so soundly that he entered into a treaty of amity, which it is probable, a feeling recollection of his late sufferings will deter him from infringing. When a fellow's heart is so dead to sensibility as to warrant him striking a woman, it is to his shoulders that the remedy should be applied.⁶²

⁵⁷ NYCRO, QSB/1745, information, 14 November 1744; recognizance, 15 November 1744, release, 24 December 1744, MIC 134.

⁵⁸ *The York Courant*, 24 August 1756 p. 3.

⁵⁹ BI, *Northend c. Northend*, 1702.

⁶⁰ Shoemaker, *Gender in English Society*, p. 107; *Dangers*, p. 229.

⁶¹ For a contrasting view see Hunt, 'Wife-Beating', p. 18.

⁶² *Newcastle Courant*, 2 February 1799, p. 2. See also Dolan, *Dangerous Familiars*, pp. 32-7.

What is clear, is that assertive women were not considered deviant. If so, they would only come to light through male counter-accusations of female provocation. But women themselves were not frightened to display the characteristics of what we might think represented a 'bad' wife to contemporaries. In the face of her husband's repeated defence that she was provoking, the verbally abusive Anne Shaw admitted that she was naturally of an unquiet temper. Still, she firmly pointed out that for the last twenty years she had just cause to be passionate because of the intolerable abuses received from her husband.⁶³ Indeed, a forceful nature does not seem to have disbarred women from being considered a good example of womanhood. In 1719, the twenty-four year-old friend of Barbara Dobby, who had known her since childhood, responded to the suggestion that she was provoking, by explaining that Barbara was a woman 'of a pritty high spirit but ... is a person of a civil and vertuous behaviour'.⁶⁴

The theory that wife-beating was a male tool used to correct challenging female behaviour is doubtful because wives expected to be able to be assertive, and to disagree with their spouse, without being beaten automatically as a result. The problem is, of course, that much of the evidence comes from wives who challenged their husbands and were physically punished in retaliation. For instance, *The Newcastle Gazette* gave an account in 1751 of the trial of Robert Steel in London for stabbing his wife, Mary. He had arrived home and started to abuse her. Mary warned him that if he would not be quiet she would leave the house. She did just that, but Robert followed her with a knife. Outside, Mary got frightened, threw a stone at him, which missed, and then challenged, 'You Rogue, I'll stand my Ground for I'll not stir from you'. Robert stabbed her in the leg, which severed an artery and killed her.⁶⁵

⁶³ BI, *Shaw c. Shaw*, 1696. Personal response to Robert's allegation.

⁶⁴ BI, *Dobby c. Dobby*, 1719.

⁶⁵ He was sentenced to death. *The Newcastle Gazette*, 9 October 1751, p 4.

Nevertheless, there is reason to believe that in the majority of marriages women did not expect to have to be submissive in order not to be beaten. Admittedly, the official discourse of northern husbands in the church courts can point to the proposal that female submission was the pre-requisite for male protection.⁶⁶ Robert Shaw argued in 1696 that if his wife behaved herself in duty, as she was obliged, then she could live safely with him without fear.⁶⁷ But northern women of several ranks rejected any such trade-off. Mary Lobley's answer to her father in law when he advised her to submit to her husband after a quarrel was: 'if ever he [her husband] lifted a hand at her again, she would do him a mischief either openly or privately'.⁶⁸ Significantly, women who were shown to be excessively submissive in their separation suits simply demonstrated that this behaviour still resulted in violence. Catherine Ettrick remarked that she finally left William, 'being tired out with [his] Cruelty and Barbarous Treatment of her she having done and submitted to more than could be expected from a slave'. Despite her 'most submissive Behaviour and Affection in doing and complying with every thing her ... Husband directed her', she could not prevent his cruel treatment.⁶⁹

Granted that some didactic literature proposed that the meek and quiet could bear injuries, crosses and hard usage better than women of a violent temper, much of it conceded that female subjection was limited.⁷⁰ Wives owed no submission to their husbands if they acted against the laws of God or man. In a passage that would give some women a certain amount of leeway, if they interpreted it in their favour, William Fleetwood advised, '[w]here Men's Commands are evidently unreasonable, shamefully indiscreet, unusual and unheard of, infamous, or unbecoming their Age, their Credit,

⁶⁶ It is argued that until the later nineteenth-century, women displayed aggressive behaviour towards men which, while it provided independence, could result in retaliatory physical abuse. By the 1890s, women accepted a trade-off of power for safety. Relief from male violence was exchanged for the right to fight, so women were more passive, but more protected. Tones, "'Torrent'", pp. 341-2.

⁶⁷ BI, *Shaw c. Shaw*, 1696.

⁶⁸ NYCRO QSB/1715, depositions, in calendar, pp. 58-61. Mary seems to have been bound-over for threatening to burn down her father-in-law's house.

⁶⁹ BI, *Ettrick c. Ettrick*, 1765. C.P. 1/1503, Answers to William Ettrick's Allegation, no. 11, 13.

⁷⁰ For example, Steele, *Ladies Library*, pp. 50-2.

Quality and Condition, they may be safely pass'd by; *omitted*, rather *than neglected* or *despis'd*'.⁷¹

The law of chastisement provides an apparently strong piece of evidence for historians' entwined theories that female submission was required in return for male protection, and male correction the inevitable response to female intransigence. Men were within their right to correct their wives.⁷² Indeed, those men who offered a defence in cruelty separation suits usually portrayed their wives as provoking. Provocation was described in generalised terms as a cross temper, a perverse and disobedient nature, and angry, scolding speech and physical acts. James Currie was more specific in his claims that whatever he desired Jane to do, 'she did the contrary act with more eagerness and violence' and replied to his good advice, 'that the devil should have him ... before she ever did as He would have her'.⁷³

Husbands were well aware that the law of correction existed, but only four men specifically used the plea in court. Their reluctance reflects the law's ambiguous nature. Correction did not give men uncontrolled licence. Chastisement could be physical, but only with a moderate use of force. Frustratingly for those attempting to define degrees of wife-beating in the past, the definition of 'moderate' was not usually provided; extreme violence was defined as life threatening.⁷⁴ At the same time, husbands who simply threatened to beat their wives could be brought before the justice of the peace. In cruelty separation suits the threat to kill was categorised as cruelty as well as physical force.⁷⁵ Maeve Doggett reveals that the law was also ambivalent about what male

⁷¹ His only qualification was that impartial people should understand those commands that wives refused to comply with; wives should not oppose simply for mastery. Two decades later, Wetenhall Wilkes similarly advised young women to be obedient to all their husband's 'lawful desires'. Wilkes, *A Letter of Genteel and Moral Advice to a Young Lady* (1740) in Jones, *Women*, p. 35.

⁷² Phillips, *Untying the Knot*, p. 98.

⁷³ BI, *Currie c. Currie*, 1729.

⁷⁴ This meant that complex notions of cruelty were not needed. Biggs, *Matrimonial Cruelty*, p. 23. It was largely nineteenth-century law commentaries that considered it in more detail. They adopted Lord Stowell's judgement, in 1790, which allowed the apprehension of violence to be taken into account.

⁷⁵ See Biggs, *Matrimonial Cruelty*, chapter 10.

behaviour was permitted. For example, in 1674 Chief Justice Hale ruled in *Lord Leigh's Case* that reasonable chastisement only extended to admonition or confinement to the house, and was not a licence to beat. Yet few eighteenth-century authors denied the legality of wife-beating. Most modern studies about marital cruelty refer to the alleged statement made by Sir Francis Buller, in 1782, that it was lawful for a husband to beat his wife, provided it was with a stick no bigger than his thumb.⁷⁶ In fact, Doggett found 'no legal corroboration for the rule of thumb', since it was not reported in contemporary newspapers or the law reports, and Judge Buller was not involved in any cases in which he might have made such a pronouncement.⁷⁷

Legal theories about provocation were not crystal clear either. John Biggs argues that since all Libels stated that cruel conduct was unprovoked, then provocation was obviously regarded as capable of affording a defence against allegations of cruelty. Some judgements support this. Sir George Lee, made the earliest pronouncement in 1755, in the Court of Arches. He stated, 'I was of opinion a wife was not entitled to a divorce for cruelty, unless it appeared that she was a person of good temper, and had always behaved well and dutifully to her husband, which the appellant had not done'.⁷⁸ One nineteenth-century legal authority, commenting on ecclesiastical law before the 1857 Matrimonial Causes Act, observed that provoking language on the part of the wife might push a husband's patience to extremity. Nonetheless he advised that while striking out with the hand might be permissible in these circumstances, repeated blows were not justified. Nor was violence that was out of proportion to the provocation excusable. Apparently each case was to be considered upon its merits.⁷⁹

⁷⁶ See *Divorce*, p. 201; Phillips, *Untying*, pp. 98-9; Margaret May, 'Violence in the Family: An Historical Perspective' in J. P. Martin, (ed.) *Violence and The Family* (Chichester, 1978), p. 138.

⁷⁷ M. E. Doggett, *Marriage, Wife-Beating and the Law in Victorian England* (London, 1992), pp. 4-15.

⁷⁸ *Taylor v. Taylor*, cited in Biggs, *Matrimonial Cruelty*, pp. 144-5.

⁷⁹ Joel Prentiss Bishop, *Commentaries on the Law of Marriage and Divorce and Evidence in Matrimonial Suits* (London 1852), p. 476. Whereas provocation was a valid defence in eighteenth-century Scotland, only one husband succeeded in his use of the plea of provocation, out of 175 cases. Leneman, "tyrant", pp. 48-9.

The northern men who used the plea of provocation did so tentatively. Although all differentiated between a slap or push and a blow, they never simply claimed: 'my wife was disobedient and therefore I corrected her physically'.⁸⁰ In 1697 Robert Shaw used the plea most directly, admitting that twice 'he struck his said Wife and gave her moderate Correction only, as he conceives with submission the Law allowes him, but the same was upon a very great and unreasonable provocation'. The provocation was that Ann Shaw 'hath taken him by his members and in a threatening man[n]er endeavoured all she could to dismember and undoe him'.⁸¹ Another man accepted equal blame for both his wife's provocative behaviour and the violent results.⁸² In 1713, Thomas Stradling conceded most of what his wife alleged, but explained that the faults were on both sides. During the last few years of their fourteen-year marriage, there had been 'very great and unhappy differences' and provocations, which led to them calling each other very evil names and him treating her harshly. The result was that together they lived an uneasy and uncomfortable life. He therefore agreed with his wife and requested that the judge separate them.⁸³ Yet another man placed a mitigating distance between the act of provocation and physical blows. In 1744, John Smith, an attorney, alleged that he was never sober when he attacked his wife. Susannah Smith provoked him so much that he would leave the house to avoid her, which induced him to drink too much, so 'when he hath come home from Drinking he hath often beat her'.⁸⁴

Margaret Hunt is wrong when she states that men seldom bothered to deny that they had beaten their wives because, in her view, the accusation was not important enough to

⁸⁰ A recent study demonstrates that the ways violent men talk about their abuse include denial, forgetting, specifically seeing only physical actions as violence, minimising abuse, incidentalizing abuse, accepting blame but not responsibility (e.g. wife's nagging), accepting responsibility but not blame (e.g. beating as a corrective), confessing without remorse. Fawcett *et al.*, *Violence and Gender*, pp. 104-7.

⁸¹ BI, *Shaw c. Shaw*, 1696.

⁸² BI, *Spence c. Spence*, 1782.

⁸³ BI, *Stradling c. Stradling*, 1713.

⁸⁴ DDR, *Smith c. Smith*, 1743. Male drunkenness did not affect the results of wives' petitions during the period. Nonetheless it was taken into consideration because it displayed the context of a violent marriage. Biggs, *Matrimonial Cruelty*, pp. 127-8.

renounce, since men assumed that they had the right to beat their wives.⁸⁵ Over 42% of the northern husbands accused of cruelty in the separation suits, denied beating their wives, because it was a serious accusation that involved social and economic repercussions.⁸⁶ Admittedly, 40% percent of the suits have no personal response. In some cases this is because it does not survive. But usually the absence was because the husband could not make any defence. Significantly many of these cases ended in abandonment; some perhaps with an agreement between the spouses, others because the husband was excommunicated for failing to respond. A few ended with the wife gaining her formal separation. The point is that these men did not wish to publicly announce that they had beaten their wives, lawfully or not.

IV

Despite the availability of the law of correction, and while still claiming their spouses were provoking, the men who denied the accusations claimed that they used self-control. One husband would either leave the room or go and sleep in another, or get out of bed at midnight 'and walk in the Streets for hours together to avoid hearing [his wife's] abusive and scandalous Language and the Reflections which she cast upon his Children'.⁸⁷ Such claims, common throughout the period, were to show that these men used their reason, the acceptable alternative to violence. As the *Book of Homilies* advised, 'reasoning should be used and not fighting'.⁸⁸ Men had to guard against losing control. As Francis Spence admitted, 'that from the very fretfull Provoking Passionate Disposition Temper and Language of his said Wife he admits that he may have been thrown off his Guard'. Still, he accepted part of the blame for the problems because he

⁸⁵ Hunt, 'Wife Beating', p. 18.

⁸⁶ Twenty, of whom five refused to answer because it was a criminal charge, although then immediately denied the beating anyway. Another three husbands made a personal response that only answered the first couple of articles, ignoring those alleging cruelty. Again these seem to have been abandoned fairly quickly. One husband claimed he was not legally married anyway.

⁸⁷ BI, *Allenson c. Allenson*, 1675. See also BI, *Shaw c. Shaw*, 1696; BI, *Pighells c. Pighells*, 1697; BI, *Idelle c. Idelle*, 1706; DDR, *Allison c. Allison*, 1765.

⁸⁸ *Homilies*, p. 241.

was unable to control his anger.⁸⁹ Crucially, loss of self-control was a serious failure of manhood.⁹⁰ It was considered unmanly to hit a woman. In 1769 a report of an Old Bailey trial for murder claimed that when the defendant struck a woman, three young fellows came up and reproached him saying '*He could be no man who would strike a woman*'.⁹¹

Accused husbands also claimed that they showed affection and love to their wives. This was the other personal barrier that was supposed to prevent men from ill-treating their wives. Advice for married couples informed husbands to lead their wives with love and cherishing, moderation and occasional yielding.⁹² William Fleetwood defined male love as fidelity to vows, providing for a wife, and affection. The latter, he viewed in terms of words and actions. Husbands who used bitter words were 'unmanly and unjust' because of their lack of love. Fleetwood reserved most distaste for those men whose bitterness went past words and 'proceeds to personal Outrage, Violence and Hurt; a thing unworthy any good and honest Man'. The bestowal of love did not just make men less inclined to lash out at their wives, it also would make a wife eager to do her duty.⁹³ *The Newcastle Journal* printed advice addressed to widowers, husbands and bachelors in 1760, suggesting that men 'govern with a gentle sway' and always love and cherish their wife so that she 'will chearfully [sic] obey so endearing a husband'.⁹⁴

In the prosecution of wife-beaters, the failure of husbands to display self-control or love was exploited. Most wives declared that their husbands beat them because of hatred, in

⁸⁹ BI, *Spence c. Spence*, 1782.

⁹⁰ Elizabeth Foyster, 'Male Honour, Social Control & Wife Beating in Late Stuart England', *Transactions of the Royal Historical Society*, Sixth Series, VI (1996), 217.

⁹¹ *Newcastle Chronicle*, 29 October 1769, p. 1.

⁹² *Homilies*, p. 241. Richard Steele and Joseph Addison advocated that husbands be benevolent, protective and loving in order to achieve harmony, quoted in Hunt, 'Wife-Beating', p. 10.

⁹³ Fleetwood, *The relative duties*, pp. 231-268. He explains that this is what lies at the bottom of the common saying that good husbands make good wives. This cliché had not lost its force by 1769 when it was observed that 'Women very seldom make bad wives, when they have got good husbands'. *Newcastle Chronicle*, 12 August, 1769, p. 3.

⁹⁴ *Newcastle Journal*, 16-23 August 1760, p. 2; *ibid.* 6-13 September 1760, p. 1.

effect a lack of love. This was also an element of legal parlance. Esther Bowes' libel of 1718 to Durham consistory court alleged, 'That notwithstanding the p[re]misses and the Laws divine and Humane ... every Husband is willed charged and Com[m]anded to Love his Wife as himself to cherish and comfort her and not to be bitter ag[ains]t her yet the s[ai]d Jonathan Bowes hath [behaved to her] with great disdain and outrageous Cruelty'.⁹⁵ The language used in court about men who were violent stressed that they were out of control.⁹⁶ Wife-beaters were described as enraged, passionate, abandoned and desperate. William Cunliffe was possessed with the 'utmost fury rage and malice'. John Laughton was described variously as being in a 'Rageing Boisterous manner' and of often being in 'violent and unaccountable passion and Rage'. James Lees was 'abandoned'. The Lees' servant said he behaved 'more like a madman than anything else'. The men's very actions demonstrated madness. Francis Spence 'ran about the House in an Outrageous manner with a Penknife and Hatchet in his hands threatning [sic] Destruction and Vengeance against his ... Wife'.⁹⁷

Women frequently alluded to male drunkenness, the epitome of unreasonableness.⁹⁸ Nearly 12% of the secondary complaints made by spouses in the separation and restitution suits concerned male drinking (see Table 10, p. 56). It was often equated with violence.⁹⁹ Martha Brooke's Libel, in 1682, linked her husband's excessive drinking with his quarrelling and fighting.¹⁰⁰ Anne Shaw stressed that when her husband drank immoderately the result was cruelty, starting when he returned in the early hours of the

⁹⁵ DDR, *Bowes c. Bowes*, 1718.

⁹⁶ Conversely, Gowing argues that husbands' violent behaviour was not described as irrational, *Dangers*, p. 219. The actions of nineteenth-century abusive husbands were described as mad. A. J. Hammerton, *Cruelty and Companionship: Conflict in nineteenth-century married life*, (London, 1992), pp. 100-1.

⁹⁷ BI, *Cunliffe c. Cunliffe*, 1701; *Laughton c. Laughton*, 1721; *Lees c. Lees*, 1803; *Spence c. Spence*, 1782.

⁹⁸ Elizabeth A. Foyster, *Manhood in Early Modern England. Honour, Sex and Marriage* (London, 1999), p. 40.

⁹⁹ Drinking to excess was associated with marital conflict as early as the medieval period, and the act of a wife trying to collect her spouse from the alehouse was believed to risk her a beating. Peter Clark, *The English Alehouse, a social history, 1200-1830* (London, 1980) pp. 28, 148. It is pointed out that drink was an exacerbating factor, not a cause of violence. Leneman, "'tyrant'", p. 39. This may well be the scientific fact. But for those who lived with it, drunkenness may have seemed as much a cause of a beating as anything else.

¹⁰⁰ BI, *Brooke c. Brooke*, 1683.

morning, while she was in bed.¹⁰¹ Disapproval was not restricted to wives.¹⁰² Robert Dobby's neighbour observed that, when he was in liquor, Robert used ill language to everyone as well as his wife.¹⁰³ Significantly, intoxication was believed to lead to a lack of self-control.¹⁰⁴ As Rebecca Whatmore, in 1789, put it, when Charles Whatmore indulged to excess in the habitual drinking of spirituous and strong liquors, it resulted in him 'giving way' to his violent, wicked and passionate temper, so that he wantonly beat her, almost daily.¹⁰⁵ Drunkenness and loss of control were pivotal in the descriptions of John Smith's frenzied violence. At various times he punched his wife, Susannah, on the head, and knelt on her chest, attempting to suffocate her, and pulled her out of bed and stood on her leg. Another time he punched her until she fell on the floor and then put his legs around her waist, fastening his feet together and squeezing her ribs, while using both fists to punch her on the face and chest. He also used a case knife and a gun, as well as his own body, as weapons.¹⁰⁶

Claims that husbands lacked self-control and love for their wives^x were conscious strategies made by or on behalf of the plaintiff. This inverts the hypothesis that beaten wives presented themselves as passive in order to gain sympathy in ecclesiastical and secular courts.¹⁰⁷ As we have seen, wives did not have to be passive. So they did not get sympathy on account of their passivity, but by drawing attention to their husbands' failing. As well as labouring their husbands' hatred and irrationality, the image that

¹⁰¹ BI, *Shaw c. Shaw*, 1696.

¹⁰² BI, *Allenson c. Allenson*, 1675. The rector of Craike observed that it was rumoured that when Charles Allenson was drunk he caused his wife, when heavily pregnant, to sit up at nights. He would also call his fellow drinkers in to his house to see what an obedient wife he had.

¹⁰³ BI, *Dobby c. Dobby*, 1719, John West's deposition, and see other deponents.

¹⁰⁴ See Susan Amussen, "'The part of a Christian man': the cultural politics of manhood in early modern England" in S. Amussen and M. Kishlansky (eds.), *Political culture and cultural politics in early modern England* (Manchester, 1995), p. 225; Alan Bray, 'To Be a Man in Early Modern Society. The Curious Case of Michael Wigglesworth', *History Workshop Journal*, 41 (1996), 158-9.

¹⁰⁵ BI, *Whatmore c. Whatmore*, 1788. The failure of self-control was not confined to men. See NYCRO QSB/1776, film 001289, information of William Ringrose, 5 November 1775. He complained that his wife threatened to kill him, for when she was drunk she 'has no government of herself'. He gained surety of the peace against her.

¹⁰⁶ DDR, *Smith c. Smith*, 1743.

¹⁰⁷ Suggested by, Shoemaker, *Gender in English Society*, p. 107.

abused wives were eager to promote was that their husbands exploited their authority. Over 6% of the cruelty separation causes revolved around overtly domineering husbands (see Table 10, p. 56). For example, in the late seventeenth-century, Charles Allenson's response to his wife's enquiry in the evening about what he wanted for dinner the next day was to say 'god damn her', and tell her to ask him in the morning. So Grace would go in the morning, and he would curse her for waking him and throw a bed staff at her; if she listened until he stirred he would still curse her.¹⁰⁸

The case against William Ettrick, begun in 1765, returned repeatedly to the issue of domination, for he was a master at mastery. A magistrate for many years (including the period in which his wife had him bound over at his own quarter sessions for striking and threatening her, as well as during the separation), William's demands upon his wife were complicated by his eccentric beliefs about social hierarchy, with which he expected her to comply at all times.¹⁰⁹ So, for example, he refused to provide much care for Catherine during her first pregnancy in 1752. As he impatiently informed her, 'many women were brought to Bed under a Hedge and went to work again and what was one Bitch more than another that there was no occasion for all that Fuss that Women made, that Nature was Sufficient of itself.'¹¹⁰ Thus he refused her the help of her sister, or of her aunt. Catherine complained that when she first went into labour, William would not immediately send for assistance. Indeed, he insisted that Catherine go to church and then visit a local friend before driving her home, all the while ignoring her pain.

Catherine was from a very genteel family (her father was mayor of Durham City) and of good education, with a marriage portion of £2000. Even so, William used her as a

¹⁰⁸ BI, *Allenson c. Allenson*, 1676. See also BI, *Laughton c. Laughton*, 1721. John Laughton caused quarrels because of his 'unhappy and uneasy temper and finding fault with trifles or where no fault really was'. Deposition of Ann Petty.

¹⁰⁹ He seems to have objected to people of high rank isolating themselves from those of lower status. For instance, in his personal answers to his wife's libel, William revealed that he was happy for his son to be baptised if Catherine would permit common or labouring people to be sponsors. In a similar vein, William's will stipulated that he be drawn to burial in a dung cart at midnight, and put into the grave by four paupers. DDR, William Ettrick, Bishop Wearmouth, 1808.

¹¹⁰ BI, *Ettrick c. Ettrick*, 1765.

servant, demanding that she run after cows and horses when they were being moved into the yard at the Ettricks' manor house in Bishop Wearmouth. On one occasion he warned her that if she 'would not runn faster he would throw a stone at her Head and taking one up in his Hand and upon saying she could go no faster he Struck her Violently on the Head, so that she was much Stunned'. William also refused to entertain guests to a pudding because it was expensive and the bane of neighbourly intercourse. When Catherine ignored this, and made a custard, he threw a large wooden dish at her in the kitchen, kicked her on the backside and threw the custard down the necessary. Similarly, he objected to 'unnecessary' expense, refusing to allow Catherine to have a fire in several rooms; if she did so, he threw the coals around the room (at death William was worth £35,000). Despite a leaning towards treating those of a lower social status as equals, this did not apply at home with his wife and children.¹¹¹

Catherine Ettrick's case emphasised William's authoritarian streak. She claimed that he had announced, 'That he had a Right to Lock her up and Feed her on Bread and Water thro' a grate and that every Husband had a Right to Beat his wife'. On another occasion he had insisted, 'Wives should and ought to be nothing but Vassalls and Slaves to their Husbands'.¹¹² These excessive phrases were useful in court documents because such male behaviour was rejected legally, socially and culturally.¹¹³ In 1736 it was claimed 'Women were never design'd to be *Slaves*, nor Men to be *Tyrants*'.¹¹⁴ Husbands were advised in *The Newcastle Journal* in 1760 to 'not act the Part of a tyrant to his wife, children or servants; for he who resolves to be feared, cannot expect to be loved'.¹¹⁵ This

¹¹¹ BI, *Ettrick c. Ettrick*, 1765.

¹¹² *ibid.*, from Catherine's Libel.

¹¹³ A number of historians agree that attitudes towards husbands who abused their superiority, expressed in law, drama and political theory, hardened after the Civil War along with concerns about political tyranny. Dolan, *Dangerous Familiars*, pp. 89-98; Anna Clark, 'Humanity or Justice? Wifebeating and the law in the eighteenth and nineteenth centuries' in Carol Smart (ed.) *Representing Womanhood: Historical Writings on Marriage, Motherhood and Sexuality* (London, 1992), pp. 187-206; Susan Dwyer Amussen, '"Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England', *Journal of Women's History*, 6, 2 (1994), 70-89. In contrast, it has been argued that, it was from the mid-nineteenth-century when considerations of marriage first focused upon husbands' abuse of authority, rather than wives' defiance. Hammerton, *Cruelty and Companionship*, p. 149.

¹¹⁴ See *GM*, Vol. 8, 1738, p. 591.

¹¹⁵ *Newcastle Journal*, 6-13 September, 1760, p. 1.

was of value to beaten wives.¹¹⁶ Ann Watson revealed her husband's exploitative attitude, when she reported that he insisted that 'he thought it no sin to kill her that she being his wife he had a right to do with her what he pleased'. Deponents consistently observed that these men subjected their wives to slavery. The Watson's maid said that she often heard Joseph declare that 'being his Wife he had a right to whip her like a spaniel Dog'. In 1800, one male friend of Joseph stopped him punching his wife on the shoulder and asked him what was wrong. Joseph replied "Damn Her, He wou'd make her submit to him, or he wou'd kill her".¹¹⁷

Clearly, people equated 'great submission' with male tyranny.¹¹⁸ Lucas Mawburne of Craike, a thirty-eight year-old rector, deposed that if Grace Allenson had not been an 'obedient wife and submitted and complied with all his ill humours', Charles Allenson would have done her a mischief. One of the Allensons' servants objected that Grace had to ask her husband his leave to go abroad as though she was a servant. He often denied her, so that she believed her mistress's life 'was a continuall slavery'. A former servant of Catherine Ettrick, questioned the way that she behaved with her husband. He said she was 'respectfull and dutiful and she seemed to be as afraid of disobliging him [William] as a child would have been afraid of being beat'.¹¹⁹

V

Wives did not have to be abject subjects. Equally, contemporaries acknowledged that both spouses could be aggressors (through actions, words, or violence).¹²⁰ This model

¹¹⁶ In Laura Gowing's opinion, husbands threatened their wives with slavery because they had internalised their right to dominance. She ignores that this was a case made by plaintiffs to emphasise their husbands' marital offences. *Dangers*, pp. 225-6.

¹¹⁷ Clearly a reference to the doggerel: 'a wife, a spaniel and a walnut tree - the more you beat them, the better they be'. *DDR Watson c. Watson*, 1801

¹¹⁸ Phrase used about Elizabeth Laughton, BI, *Laughton c. Laughton*, 1721.

¹¹⁹ BI, *Allenson c. Allenson*, 1675. BI, *Ettrick c. Ettrick*, 1765. CP.I/1495, Edward Atkinson's deposition.

¹²⁰ In Neckarhausen male violence was considered a justifiable response to female looks and words. Further, it 'is not obvious from the many cases of male violence that domination was all on one side. Its central object was to slug the other partner into silence ... Both sides had weapons which were considered to be extremely damaging.' David Warren Sabean, *Property, production, and family in Neckarhausen, 1700-1870* (Cambridge, 1990), p. 137.

fits well with cultural images which often portrayed marital relationships, quite literally, as a battle of the sexes. These accounts represented women as eager combatants in a battle whose victor should, preferably, be male. In 1732 *The Gentleman's Magazine* printed a poem called 'The Pig. A Tale', in which a group of husbands were drinking together and competing with each other to claim that they had the most obedient wife. Wagering that none of their wives were obedient, the narrator's test was that each husband send a message to his wife that it was his will to invite his friends, that evening, to a boiled pig. Each wife failed in a different way. One simply refused to listen to the message; another rejected the request asking, 'Sir, do you take me for your cook?'. A third wife would only roast the pig and the fourth wife, who had a 'spirit brook'd not to obey', rebuffed male orders relating to her own sphere, the kitchen. The next wife was 'softer', so mild and sweet that her husband was sure he would win. She said she would do it freely, but had never heard a stranger thing, and qualified her acquiescence by requesting, 'Prove but that ever woman did it'. So her husband lost for 'want of precedent'. The final wife, a plain woman, unused to refusing her lord's commands, agreed to boil a pig, 'to hinder squabble', but refused to eat it herself. So this man neither lost nor won. As the poem concluded:

But take this counsel from a friend.
Boast not your empire, if you prize it;
For happiest he, who never tries it.
Wives unprovoked best obey,
And that you'll find the safest way.
But if your dear ones take the field,
Resolve at first to win or yield;
For heaven no medium ever gave,
Between a sovereign and a slave.¹²¹

An apparently well-known tale in 1795 involved a husband and wife quarrelling and trading blows. At a knock on the door the 'contest' was stopped. On going to the window the husband was informed by the caller that he had business with the master of

¹²¹ *GM*, vol. 3, March 1733, pp. 375-6. See also 'The Matrimonial Creed' which played with the notion that men were made for government, yet could not dominate their wife. *Newcastle Chronicle*, 16 October 1779, p. 4.

the house. 'That point is not yet settled', said the husband, and shutting the window renewed the fight. 'Within five minutes, the wife gave out; and the husband running to the door, told the stranger, "that he might walk in, for that he had the pleasure of informing him with certainty, that he was the *master of the house*"'.¹²² As stereotyped as these images of matrimonial warfare might be, their message was echoed by the expectations of the marital relationship found in separation suits. Essentially, both undermine the argument that the experience of marriage was unambiguously gendered.

¹²² *Newcastle Courant*, 17 October 1795, p. 4.

CHAPTER FIVE

'Mutual fidelity to the marriage bed': Adultery.

I

The domination of male plaintiffs in adultery separation suits and parliamentary bills for divorce,² as well as legal and prescriptive writing about adultery, which invariably focused on female infidelity, leads to an obvious conclusion: unfaithful wives mattered more than unfaithful husbands. Keith Thomas explored this sexual double-standard in depth. In a study founded on literary, prescriptive and legal writings, he concluded that the double-standard's origin and longevity were rooted in 'the view that men have property in women', which was tarnished if women had sex with anyone other than their husband.³ Recently the double standard has been re-examined. For example, Laura Gowing opposes the idea that it was a 'monolithic system' imposed by men and suggests that women also enforced it; although she still observes that men's and women's sexual acts 'had different contexts, meanings, and results'.⁴ By looking past the blatant sex division of separation suits and defamation suits at the church courts, however, it is clear that the sexual double-standard was less rigid and pervasive.⁵

¹ The author of 'The Repository on Marriage' insisted that disloyalty defeated the point of marriage because it 'dissolves the cement of the relation, weakens the moral tie [sic], the chief strength of which lies in the reciprocation of affection'. *The York Chronicle*, 19 February 1773, p. 4. Also see Rev. John Thomlinson's diary in J. C. Hodgson (ed.), *Six North Country Diaries*, The Surtees Society, Vol. 118, (Durham, 1910), entries for 1718, pp. 126, 135. He referred to suspicions about local infidelities, carried out by both sexes, but did not overtly criticise one sex more than the other.

² In Scotland, however, where divorce was available to both sexes on the grounds of adultery, they sued in quite even numbers. Leah Leneman, 'Disregarding the Matrimonial Vows': Divorce in Eighteenth- and Early Nineteenth-Century Scotland', *Journal of Social History*, 30, 2 (1996), 471.

³ Keith Thomas, 'The Double Standard', *Journal of History of Ideas*, 20, (1959), 195-217.

⁴ *Dangers*, pp. 3-4. For a different re-interpretation of the sexual double-standard see Elizabeth Foyster, *Manhood in Early Modern England. Honour, Sex and Marriage* (London, 1999), pp. 6-9.

⁵ It has been suggested that women could take advantage of the fragility of early modern male sexual reputation. Bernard Capp, 'The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England', *Past & Present*, 162 (1999), 70-100.

II

It has been argued that the sexual double-standard was a restrictive force upon women's lives, physically as well as psychologically. Lynn Abrams suggests, in her study of nineteenth-century Germany, that adultery cases show 'that husbands relied upon village community structures to regulate their wives' behaviour when they were away'.⁶ The inference is that community members enforced the double-standard by policing married women's sexuality. Those who concentrate on elite marriage breakdown, see a similar role for servants. For Stone, the relationship between the adulteress and her servants was manipulative. The latter were opportunistically biding their time until they could reveal an infidelity at the greatest benefit to themselves.⁷

Generally, privacy was indeed often obtained with the assistance of others, especially servants. Elizabeth Myres' maid apparently promised not betray her mistress when she had an affair with John Jopling, a married man. Her servants knew that when he visited they were to keep out of the chamber. On Sundays, Elizabeth sent her children to church and remained in the house with John.⁸ Yet, despite household layout and the presence of servants, individuals in this period had a notion of privacy, preceding the revolution in privacy identified by Stone.⁹ It could simply mean that a bed was curtained and therefore considered out of bounds to other members of the household.¹⁰ Furthermore, relationships between servants and masters could be quite close, particularly in less well-off households that had smaller numbers of servants, often only one.¹¹ It is thus as

⁶ Lynn Abrams, 'Whores, Whore-Chasers, and Swine: The regulation of sexuality and the restoration of order in the nineteenth century German divorce court', *Journal of Family History*, 21, 3 (1996), 274.

⁷ *Divorce*, pp. 211-15, 220-25.

⁸ BI, *Office c. Myres and Jopling*, 1674.

⁹ *Divorce*, p. 229.

¹⁰ For example, Ellenora Green deposed that she slept in the truckle bed in the same chamber as her mistress whose lover would join her in the main curtained bed. BI, *Office c. Myres and Jopling*, 1674. Also see Linda Pollock, 'Living on the stage of the world: the concept of privacy among the elite of early modern England' in Adrian Wilson (ed.), *Rethinking Social History, English Society 1570-1920 and its Interpretation* (Manchester, 1993), pp. 78-96.

¹¹ Francis Place recalled that his family took short lunches and their maid often sat at table with them. Bridget Hill, *Servants: English Domesticity in the Eighteenth Century* (Oxford, 1996), p. 11.

plausible to identify a bond between servants and employers which was broken when deponents were required on oath to give evidence.

In fact, it is misguided to read the structure of the village community from the legal structure of eighteenth-century adultery separation suits. Obviously wives conducted their affairs while their husbands were away from home; they were unlikely to do otherwise. This does not mean that wives were policed. Very occasionally a husband asked a servant to keep an eye on his wife. But which came first, the spying or the suspicion of adultery? Mostly, it was simply ad-hoc and opportunistic. When James Stevenson and Thomas Telfer found that William Smith, the rector of Ilderton and vicar of Alnham in Northumberland, was away, they spied on his wife because they had heard gossip. But they were two young men having a laugh. First they tried to see into the upstairs chamber by positioning themselves on a high spot in the garden, late in the evening. This did not work as well as expected, so they looked for a ladder. Not finding one, they turned their hand-barrow on end, tried to balance on it and peered into the room. They even locked the front and back doors of the house from the outside, and sat off at a distance to see what mayhem they would cause. This had the required effect for, after scaring the maid senseless, it forced Eleanor Smith to climb out of a downstairs window so that she could unlock the doors.¹² These are hardly the trademarks of systematic surveillance. A marriage simply became public property after the event, when all the 'public' elements of it were collected within a suit.¹³

III

Acceptance of the double-standard also colours explanations about motivation. Male adultery, when discussed, is identified as pleasure-seeking or opportunistic sexual predation. But historians rarely attempt to explain, even in general terms, why women

¹² DDR, *Smith c. Smith*, 1789.

¹³ After all, there needed to be proof that the suit was not collusive or dependent only on the word of the spouses.

had love affairs. In itself, this is a worthwhile question because, in the light of most studies of female sexual reputation, adulteresses were apparently willing to give up their social standing, indeed their very identity, for another man. In the eyes of the law they endangered their access to children and their economic livelihood. Exploring motivation is difficult, because, like representations of wife-beating, the framing of the accused's love affair was in line with the requirements of evidence. Proof of adultery could only be established by circumstantial evidence because, '[a]dultery is peculiarly a crime of darkness and secrecy'. Being caught in the act was simply too unlikely, so that it was largely demeanour and behaviour that counted.¹⁴ Thus descriptions tend towards a series of snapshots of occasions where infidelity was likely to have occurred.¹⁵ They include disordered and dirty clothing, overheard noises that might indicate a couple having sex, the exchange of gifts or inappropriate glances, speech and touch. Theoretically, if undue familiarity occurred in public then improper familiarities would occur in private.¹⁶ Only occasionally do Libels provide a frozen image of a couple caught in the act of sex on a bed or a chair, since at least two deponents were required to depose that they had witnessed intercourse.¹⁷ Proof of a pregnancy which could not possibly be within the conjugal relationship was proof of adultery, as was evidence that one spouse was living with another partner following separation.¹⁸

Still, the context of adultery can sometimes be reconstructed, although not necessarily its specific cause. The most common background to the adultery separation cases is that the wives who had affairs had less to lose than other wives, because their husband was

¹⁴ Three links needed to be established: the criminal intent of the defendant; the intent of their alleged lover; and the opportunity for adultery. J. P. Bishop, *Commentaries on the Law of Marriage and Divorce and Evidence in Matrimonial Suits* (London, 1852), pp. 422-27. He echoed the words of St. Paul who called adultery a work of darkness, quoted in the *Book of Homilies*, p. 81.

¹⁵ For a representative adultery Libel, BI, *Mitchinson c. Mitchinson*, 1775.

¹⁶ Henry C. Coote, *The Practice of the Ecclesiastical Courts* (London, 1847), pp. 313-8.

¹⁷ Confession was not enough because it could be the result of collusion between spouses, although it did rank as evidence. Coote, *Ecclesiastical Courts*, p. 315.

¹⁸ Other admissible evidence included visiting a brothel and venereal disease that began long after the wedding. Letters from a wife to her lover could be admitted as proof if they indicated 'gross familiarities', but were insufficient if they did not imply physical adultery. For bars to adultery see Bishop, *Commentaries*, pp. 333-410; Richard Burn, *Ecclesiastical Law* (2 vols., London, 1763), vol. 2, p. 42; Coote, *Ecclesiastical Courts*, p. 362.

already absent from one or another aspect of the marriage. Some husbands were frequently absent due to work. Elizabeth Dent had an affair with her husband's brother during John Dent's ten month absence, between 1720 and 1721, in London on business.¹⁹ John Harland of Whitby, a mariner, associated his wife's infidelity with his time at sea. Rachel Harland had travelled with him from Shields on his trip to London with coal. On their return, they called in at Whitby, about Candlemas, 1749. Rachel stayed there and John continued on the ship and only saw her again for a few weeks in January 1751; leaving again without knowing that she was pregnant. Returning in August, he discovered that she had given birth to a son, in May, which could not be his.²⁰ A husband's illness also created a lacuna in marriage that could facilitate an infidelity. Mary and John Greenwood were married in 1781, when he was nineteen and she eighteen years-old. Thirteen years later, Mary embarked on an affair with Charles Wrigglesworth, a twenty year-old saddler and innkeeper. Mary connected this with John's incapacity from illness. Her interrogatories asked whether John was not 'a person of Weak Habit or Constitution frequently out of Health'? The deponents confirmed this, as well as, poignantly, her affection and care for him when he was indisposed. Sadly, John's death brought an end to the suit.²¹

Substantial age difference was potentially a problem after some years of wedlock. Approximately 44% of the wives committed adultery before they had been married for six years. Thirty percent, however, did not start the alleged affair until they had been

¹⁹ BI, *Dent c. Dent*, 1722; also see *Barttelot c. Barttelot*, 1793.

²⁰ After Rachel admitted that it was Richard Jackson's child, John took the baby to the overseers in order to insist that Jackson maintained it. NYCRO QSB/1752, examinations, 6 January 1752, MIC 137.

²¹ BI, *Greenwood c. Greenwood*, 1796. The sense that Mary and John had not stopped loving each other, and the sadness of her fascination for her lover is forcefully demonstrated in John Greenwood's will, which he made 9 May 1796, around the time he began the separation suit. It stated, 'Whereas Mary my wife hath for some time last past conducted herself in such a Manner towards me that it is become impossible any longer to cohabit with her and also makes it Necessary for me to obtain a Divorce in which case I apprehend she will be only entitled to Alimony during my life and no longer but in order to prevent her being under the Necessity of conducting herself improperly for want of subsistence', he devised an annuity of £100 to be paid half-yearly. He also bequeathed £50 to be paid immediately after his decease. The rest of his estate was entrusted to his children. BI, *John Greenwood*, Pontefract, May 1797.

married for over ten years, and another 17% between six and ten years after marriage.²² In the last two categories were women who had been married when young to older men.²³ John and Ann Taylor of Bridlington were nineteen years apart in age and her infidelity occurred many years after her wedding, when she was thirty-eight, in 1775. William Chaworth was forty when he married Alice Colly, twenty years his junior, in December 1747. After eleven years they separated and the following year Alice became involved with William Heppenstall, a cordwainer.²⁴ Several wives were already living apart from their husbands when they began an affair, although it was sometimes alleged to have begun almost in tandem with separation.²⁵ Infidelity would cause wives to lose their husband's financial support, but the presence of another partner may have mitigated the problems.

Robert Shoemaker, noting the numerous social, economic and physical penalties of extra-marital sexual activity for women, argues that they were unlikely to risk an affair simply for pleasure.²⁶ Ironically, the deponents' descriptions of events frequently recreate just that image because proving undue familiarity between a wife and her lover was important. Adulteresses sat in quiet places with their lover, laughing and talking intimately; they played games and exchanged gifts. Lady Jane Vavasour and her husband's steward, William Parker, were seen laughing and jesting in discourse. Lucy Hamerton went on a two-week trip with Jane to the York horse races. William stayed at their lodgings throughout. Lucy recalled seeing him lying on a bed pretending to be

²² Calculated from date of marriage to date cited for start of adultery. Under 1 year: none; over 1 year and under 6: ten; over 6 and under 10: four; over 10 years: six; unknown: two.

²³ Nine of the twenty-three adultery separation suits stated the ages of the spouses at marriage, and only two of these couples were of a comparative age. Four couples had a small age difference, with the husbands usually in their twenties and the women minors. Three couples had a substantial age difference with the husbands over forty years-old and the wives either minors or in their early twenties.

²⁴ BI, *Taylor c. Taylor*, 1776; BI, *Chaworth c. Chaworth*, 1760.

²⁵ Forty-three percent of the wives were adulterous for approximately two years before their husband sued them for separation. Thirteen percent of the husbands found out about the infidelity very quickly, and 13% of the wives managed to be allegedly adulterous for over ten years. Most of these were women who were already separated from their husbands. Calculated from the date of adultery to the date of the action.

²⁶ Shoemaker, *Gender in English Society, 1650-1850: The emergence of separate spheres?* (London, 1998), p. 75.

asleep while Jane kissed him, joking that if he did not wake up she would dress him in her hood and garters.²⁷ One of Dorothea Wentworth's letters to her lover (presented as exhibits in her husband's 1756 separation suit) informed him that she missed him playing tunes on his flute to her, because they raised her spirits. Her lover's next-door neighbour deposed that he saw Samuel throwing 'himself and laying on' Dorothea's lap while they sat up until midnight, talking and drinking rum punch.²⁸

The association of fun with an adulterous wife was heavily promoted in the suit against Eleanor Smith. In the summer of 1787 the kitchen end of the rectory in which the Smiths lived was enlarged, and in May 1788, another part of the house was rebuilt following a fire. An inveterate flirt, Eleanor was accused of levity towards the young workmen employed on the building. Her servant, Mary Whinham, told how her mistress gave them tea and victuals when they were employed by the day and supposed to find their own. Eleanor played at forfeits with them, apparently in order to have an excuse for kissing them. Indeed the plasterer, the joiner and blacksmith had all kissed her. One particularly evocative deposition described her running into the fields, chased by the joiner who was threatening to throw soapy water from a basin at her.²⁹

Unmistakably, some wives simply fell in love with another man. Dorothea Wentworth wrote to Samuel Hawkredge that no one could love more than they did.³⁰ The relationship between Henrietta Stapylton and her father-in-law's butler, John Muskiet, was probably an unsought love affair in which both participated against their better judgement. When Lois Lockton, a house-maid, quietly informed the butler about the rumours of his affair, John became passionate, trembling and agitated. He swore that Lois was mad: 'Did she think that he would be Guilty of such a crime as that with his Master's Daughter in Law and that too in Sir Martin's own House No he loved Mrs

²⁷ BI, *Vavasour c. Vavasour*, 1715.

²⁸ BI, *Wentworth c. Wentworth*, 1756.

²⁹ DDR, *Smith c. Smith*, 1789.

³⁰ BI, *Wentworth c. Wentworth*, 1756.

Stapylton as his own Brother'. Eventually Henrietta was ordered out of the house by her father-in-law, during her husband's absence, and the butler was dismissed. She left in Sir Martin's carriage and, about quarter of a mile from Myton, John suddenly leapt over a hedge into the lane and stopped the carriage. Witnesses described the couple both weeping bitterly as they made their farewells.³¹

Robert Shoemaker proposes that women had affairs for social or economic advancement. Sex was a bargaining tool for some married women, who gained benefits for their husbands; others were blackmailed into an affair to avoid detrimental effects upon their spouse.³² This is remarkably similar to the model of victimised single women found in studies of male-master/female-servant sexual relationships, which illustrate the exploitative nature of patriarchy.³³ Thus Cissie Fairchilds surmises that French female servants became involved with their masters from loneliness, sexual frustration, affection, for the reward of protection or money, or in fear of a withheld salary or dismissal. They also literally had nowhere to hide.³⁴

The analogy is inadequate, for, in cases where the social status of both husband and lover was stated in adultery separation suits, many of the alleged lovers were of lower rank than the husband.³⁵ Only two of the husbands were of lower rank than their wives' lovers, one a rector whose wife's lover was a wine merchant, the other a reverend whose wife's lover was described as an esquire.³⁶ Twelve of the husbands were clearly of much

³¹ She married Martin Stapylton in 1780. His parents, Sir Martin and Lady Stapylton, found her unsuitable (she was a widow and possibly of lower rank). But on Sir Martin's inheriting his title and estate at Myton in Yorkshire, they grudgingly accepted her and all lived there together. BI, *Stapylton* c. *Stapylton*, 1786.

³² He bases this on the diaries of Samuel Pepys, John Cannon and James Boswell who all had affairs with married women of lower social status. Shoemaker, *Gender in English Society*, pp. 74-5.

³³ For example, Jill Barber, "'Stolen Goods': The Sexual Harassment of Female Servants in West Wales during the Nineteenth Century", *Rural History*, 4, 2 (1993).

³⁴ Cissie Fairchilds *Domestic Enemies: Servants and Their Masters in Old Regime France* (London, 1984), pp. 164-81. This changed after 1750 with the increasing contractual relationship between master and servant, and increase in privacy. Fairchilds, *Domestic Enemies*, pp. 188-92.

³⁵ Earlier London separation suits also show differences in rank between lover and wife. *Dangers*, p. 142.

³⁶ In two instances the status/occupation of neither was clear. In three cases the relationship was either ambiguous or between equal status, i.e. with the brother of the husband.

higher rank than their wives' alleged lovers, some of whom were their servants.³⁷ In eight instances the wives' lovers were the husbands' employees.³⁸ Studies that acknowledge this feature of adultery insist that the relationship between masters and female-servants and mistresses and male-servants were wholly different. The former confirmed patriarchy, the latter betrayed its hierarchical precepts.³⁹ In Tim Meldrum's words, an 'affair between mistress and manservant was not just a sexual but a social inversion'.⁴⁰ The situation was particularly reviled in popular literature because it presaged disorder.⁴¹

No doubt the powerful connotations of early modern popular representations had some influence on the way that the description of such relationships were styled in separation suits. Thus the allegations about Mary Manwaring's affair emphasised its physical symbols. After thirteen years of marriage, from 1758, she allegedly had an affair with John Read, a tenant farmer on the Manwarings' estate. The Libel stressed how servants noticed that Mary's clothes were often dirty on the back with cow dung and filth, her sleeves stained with grass and the back of her cloak and hat soiled. These were signs both of inappropriate sexual and cross-rank intimacy. So, for example, the servants deduced that John's dirty leathern breeches caused the turned-up, soiled and greasy lower part of Mary's shift. Masters of verbal description that eighteenth-century people were, these words must have conjured up a very visual image of Mary's infidelity. The

³⁷ Six of them described themselves as gentleman and three as esquire. Of these one was a naval captain, and one owned mills. The occupations of another five husbands were stated: apothecary, attorney, dye-works owner, officer of customs, joiner and innkeeper. Three husbands' occupations were not stated, although one of them employed a clerk.

³⁸ Of the gentlemen, the wives' lovers were a steward, tenant yeoman, butler, and occupation not stated. Three of the business men's wives had relationships with their employees: clerk, saddler, and painter. Also in the case of the attorney husband, his wife had an affair with a labourer whom he probably employed.

³⁹ In France the latter was illegal and carried the death penalty for the servant. This explains why the incident of relationships between mistresses and male domestics in Old Regime France was rare in reality, although common in rumour, scandal and innuendo. Fairchilds, *Domestic Enemies*, pp. 181-5.

⁴⁰ Tim Meldrum, 'London Domestic Servants from Depositional Evidence, 1660-1750: Servant-Employer Sexuality in the Patriarchal Household' in Tim Hitchcock, Peter King and Pamela Sharpe, (eds.), *Chronicle of Poverty: The Voices and Strategies of the English Poor, 1640-1840* (London, 1997) pp. 60-1.

⁴¹ For example, representations of crime between 1550-1700 often showed a wife conniving with her lover, also her servant, to murder her husband. Frances E. Dolan, *Dangerous Familiars, Representations of Domestic Crime in England, 1550-1700* (New York, 1994), pp. 56-7.

Libel evoked the marked rank difference, alleging that Mary's response to the advice of friends was, 'That Love was a Levellar and that ... John Read was a Clean sweet Man and had that which would recommend him before any Gentleman'.⁴²

Tim Meldrum introduces a complementary victim to Shoemaker's, by proposing that mistresses who had affairs with their servants were as much victims of predatory men as were those female servants who were seduced; both sorts of women lost more than their comparative menfolk.⁴³ Yet in the north of England, most relationships were not grotesque hierarchy inversions, or sexually exploited female victims. They were simply relationships where a man came into close contact with the wife. Married women who shared their space and time with men employed by their husband were not victims, they just inconveniently fell in love. Other unequal status relationships were due to a narrower social circle following a separation.

More commonly, when the unequal status of partners in illicit sexual relationships is discussed, it is men who hold the higher hierarchical position. It has been said that in France, servants appealed to their masters because of their youth and 'the eroticism of inequality', and were convenient to have sex with in terms of space, rank, and vulnerability to pressure.⁴⁴ Of the thirty-three office suits prosecuting adulterers, where the female lover's status or occupation was defined, eight were servants of the male defendant. Moreover, a number of the husbands in the separation suits who were accused of adultery allegedly had the affair with their maids. Nonetheless, the northern records do not indicate that masters felt they had an institutionalised right to sexual gratification with their servants.⁴⁵ No doubt, female servants did fall prey to exploitation by their masters. In 1693, William Burton, a beer brewer in the city of York, was

⁴² BI, *Manwaring* c. *Manwaring*, 1761.

⁴³ He refers to the male servants' 'predatory sexuality' directed at mistresses. Meldrum, 'London Domestic Servants', pp. 60-1.

⁴⁴ Fairchilds, *Domestic Enemies*, pp. 188-9.

⁴⁵ For a similar point, Meldrum, 'London Domestic Servants', p. 56.

prosecuted by the church courts for adultery with his servant after she had been brought before two justices of the peace at Kendal for bearing a bastard (she had gone there while pregnant), and admitted that its father was William. Agnes Hunter, thirty-eight, claimed that the relationship occurred during William's wife's lying-in period. She explained that he forced her to consent to sex with him, when she had to attend him in the night time. Once she was pregnant he told her not to worry because he frequently got his servants with child.⁴⁶

Still, there is reason to believe that not all female servants were the victims of coercion. Elizabeth Lupton told the quarter sessions that her master, the husbandman Joshua Nicholson, of Tollerton, North Yorkshire, had inveigled her to lie with him for some years on 'pretence that his wife was an old woman and could not last long, and then he would marry' Elizabeth.⁴⁷ This at least admits that Elizabeth made a conscious choice. Richard Adair warns against simplistically explaining all master-servant relationships as exploitative. For example, housekeepers sometimes went on to marry their masters. Furthermore, in some regions and ranks, the economic disparity between master and servant was not that extreme.⁴⁸ Ann Watson was successful in obtaining a separation from her husband Joseph, an innkeeper in Wolsingham, in 1803. When he died in 1822 he left his copyhold house and appurtenances in Headhope Street to his daughter. Joseph also left £20 per annum to his 'housekeeper' Sarah Ayton, as long as she remained unmarried and behaved herself to the satisfaction of the trustees. After her decease the residue was to be shared between Joseph's children, both the three born in wedlock and the five 'natural' children he had by Sarah.⁴⁹ The sexual unavailability of a wife was also sometimes linked to adultery with a maid. For example, a servant of Robert Dixon of Sutton in the Forest, deposed that Robert committed adultery with

⁴⁶ In Kendal she pretended to be married but during her labour she feared she was going to die, so to satisfy her own conscience she confessed that she was unmarried. BI, C.P. H/4587, *Office c. Burton*, 1693.

⁴⁷ NYCRO QSB/1733, deposition, 1 December 1733, MIC 130.

⁴⁸ Adair, *Courtship, illegitimacy and marriage in early modern England* (Manchester, 1996), pp. 83-6.

⁴⁹ DPR, 1822, Joseph Watson, Wolsingham.

Isabell Sturdy during 1719 and that Robert and his wife laid in separate beds.⁵⁰ The curate of Holy Island, who allegedly had an affair with his maid in 1753-4, had lived apart from his wife for some years.⁵¹

Without denying the existence of coercive sex, the plea of unwillingness may have allowed women to save face while admitting to a sexual liaison outside marriage.⁵² It is interesting that this was not restricted to servants. In 1699, Peter Poole was bound-over to appear at the quarter sessions to answer the information of Margaret Metcalfe, the wife of a weaver in Ebberston. She claimed that he was lewd and disorderly and several times had tempted her to lie with him. Eventually, 'with p[er]swacons & Threats [he] p[re]vailed with her' to have carnal knowledge of her body and continued to solicit her to commit the 'detestable' act with him.⁵³ Married women used the plea that they were coerced by force or threat, when defending themselves against accusations of adultery. After Rachel Harland's husband refused to maintain her child, who was fathered by Richard Jackson, an innkeeper, the case came before the justice of the peace. She claimed that Richard came to her house several times in 1750, while her husband was at sea, and tried to induce her to lie with him. She always refused, but after Lammas, when returning home from Whitby at about eight in the evening, Richard came to her and forced her into a coal house where they had sex. Like other cases, it is simply not specified whether the intercourse itself was forced. Thereafter Richard visited Rachel three times in the following three weeks. They seem to have continued their physical relationship since he desired her not to be uneasy if she proved to be with child, for he

⁵⁰ BI, CP.I/491, *Office c. Dixon*, 1719.

⁵¹ DDR, *Office c. Robertson*, 1755.

⁵² For a discussion of early modern ambivalence about coercive sex and 'public cultures of nonconsensual intercourse', see Rebecca F. King, 'Rape in England 1660-1800: trials, narratives and the question of consent' (University of Durham, MA dissertation, 1998), pp. 83-120, 141.

⁵³ NYCRO QSB/1700, film 119, deposition and recognizance, 27 December 1699. Also see BI, *Holyman c. Holyman*, 1730. Jane Holyman described the adultery as a rape. In law, the rape of a married woman was differentiated from adultery. King, 'Rape', p. 37.

would not let them be in want.⁵⁴ Significantly, ravishment could be a bar to being sued for adultery.⁵⁵

Men also had the notion of male sexual exploitation turned back on them, or at least claimed that they did in their defence.⁵⁶ When John Davison of Treswell, Nottinghamshire, was prosecuted by York Chancery Court in 1665, he denied that he had committed adultery with his servant, Mary Barthroy. Instead, he claimed that Mary and he had quarrelled and consequently he 'gave her some blowes'. In retaliation, he said, she complained to a justice of the peace and got a warrant against him, confessing that she had committed adultery with him.⁵⁷ It was possible for servants to take advantage by falsely claiming that their master had fathered their illegitimate child, but this could backfire. Although Mary Page laid her child upon her master, Thomas Mewburne, in 1716, the case ended up at the North Riding quarter sessions with a number of servants deposing that Mary was in fact impregnated by a fellow servant, Thomas Hughill. One deponent overheard Hughill admitting to his wife that he was the father, but that Mary was laying the baby on those that had more money to keep the child.⁵⁸

IV

As clear-cut as the sexual double-standard might have been in legal and prescriptive texts, at the level of a personal union, the meanings of husbands' and wives' adultery to their respective spouses echoed religious teaching. According to scripture, adultery broke the conjugal vows and both male and female adultery was considered to be of equal weight. In separation suits on the grounds of adultery there was no gender bias;

⁵⁴ NYCRO QSB/1751, examination, 6 January 1752, MIC 137.

⁵⁵ Marjorie Nevill, 'Women and Marriage Breakdown in England, 1832-1857', (University of Essex, PhD Thesis, 1989) p. 148.

⁵⁶ For women's use of male sexual reputation for their own ends, through seeking redress, as well as using negotiation, manipulation or extortion, see Capp, 'Double Standard Revisited', pp. 70-100.

⁵⁷ At his appearance before the justice he promised to pay her £4 to end the differences. The church court prosecution arose from this action. BI, C.P. H/2797, *Office c. Davison*, 1665.

⁵⁸ NYCRO QSB 1716, depositions, 20 August to 24 September, MIC 124.

the language used to describe adulterers was the same, regardless of sex. In office suits the male and female defendants were accused of committing adultery 'to the high displeasure of almighty God the danger of his [or her] owne soule and evill example of others.'⁵⁹ The sense of betrayed intimacy is conveyed by the terms used by contemporaries to describe adultery. 'Criminal conversation' or 'criminal correspondence' evoked the sense of wrong, but the occasional use of the euphemisms to be 'kind with' or 'kiss' embodied the act of misplaced love.⁶⁰ Hugh Vawdrey, a sixty-two year-old labourer was picking briars, when he claimed he saw Mary Manwaring and her lover meet, kiss and lie on the ground. Three minutes later her petticoats were up and his breeches down, 'and her Body move, so that if ever Man kiss'd a Woman ... John Read then kissed her'.⁶¹

The marital separation suits and cases of marital conflict that came before the quarter sessions, demonstrate that both male and female adultery was acknowledged to cause deep rifts in marriages. Female adultery was one of the few occasions where the parties in a separation suit made an explicit connection between an event and consequent violence.⁶² Daniel Ottie defended himself against a restitution case brought by his wife Elizabeth, in 1685, by arguing that she was a drunkard and led a debauched life. Against his express will, she stayed two nights at a reputed bawdy house in York where she committed adultery. On her return he, 'rebuked her for her disobedience and gave her a box on the eare or a kick on the britch and turned her out of doors'.⁶³ The violence was understandable, if not always excusable, largely because female adultery was perceived to unbalance a husband, mentally and emotionally, leading to loss of self-control. In the 1702 prosecution by the Archdeacon's Court, Northumberland, against Dorothy Stafford, the Additional Positions claimed that her adultery caused such jealousy and

⁵⁹ BI, C.P. H/2797, *Office c. Davison*, 1665.

⁶⁰ According to the *Oxford English Dictionary*, 'kind' can refer to performing sex in both a natural sense, as in a part of nature, or in affectionate, loving, and fond terms, where it is used euphemistically.

⁶¹ BI, *Manwaring c. Manwaring*, 1761.

⁶² Also Foyster, *Manhood*, pp. 183-4.

⁶³ BI, *Ottie/Otley als. Awte/Awtey c. Ottie/Otley als. Awte/Awtey*, 1685

discontent in the mind of her husband, Christopher Stafford, the rector of Bothall, that he moved to London. As the Stafford's servants explained, the extent of Christopher's discontent led him to beat Dorothy before departing.⁶⁴

Over 3% of men in the cruelty separation suits experienced jealousy about their wives (See Table 10, p. 56).⁶⁵ Some husbands stated that it was rumoured that their wives were too familiar with another man. A few sympathetic deponents suggested the same.⁶⁶ Although the emotion might be understandable, it was censured because it resulted in all sorts of problems.⁶⁷ 'Philogamus' warned that, ironically, male jealousy was often 'the first Cause of Infidelity in the Spouse'.⁶⁸ Violence was another consequence. Husbands and their wives' lovers often ended up in fights, leading to a prosecution by one or the other. For example, in 1733, John Rennison of Stokesley accused Francis Coward of assaulting and bruising him in the street without provocation. John said he had simply asked Francis if he had been with John's wife the previous night, since he had recently caught the two together in an 'unlawful act'.⁶⁹ *The Gentleman's Magazine* printed an account in 1737 of a man who was imprisoned for two years by Leicester Assizes for sewing up the private parts of his wife, because of his irrational jealousy. As he 'went from his Trial, the Women scratch'd him terribly'.⁷⁰

Male adultery was also envisaged to cause immense problems. Nearly 15% of the separation and restitution suits involved accusations of male infidelity (see Table 10, p.56). In cruelty suits, this was intended to show the disastrous results of infidelity, not provide a tolerated example of wife-beating. In legal and popular understanding a wife's

⁶⁴ BI, Trans. C.P.1702/3, *Office c. Stafford*, 1702.

⁶⁵ Foyster, *Manhood*, pp. 130-38.

⁶⁶ See DDR *Watson c. Watson*, 1801. Joseph's personal answer. Also BI, *Idelle c. Idelle*, 1706, (CP.1/154) John Idelle's deposition.

⁶⁷ For instance, *GM*, May 1735, p. 270, a poem that warned that jealousy was the 'Source of domestick misery' since it tormented husbands. They were advised to fight this trait.

⁶⁸ Philogamus, *The Present State of Matrimony: Or, the real causes of conjugal infidelity and unhappy marriages. In a letter to a friend* (London, 1739), p. 60.

⁶⁹ NYCRO QSB/1733, depositions, 25 August 1733, MIC 130.

⁷⁰ *GM*, April 1737, p. 250.

discovery of her husband's affair led to quarrels and violence. The link was made in other matrimonial cases. Ellen Lambe was prosecuted for adultery and fornication in 1694 by York consistory court, which alleged that her lewd carriage with the married Joseph Hornby created 'great disatisfaccon and difference betweene the said Joseph ... and his said wife in so much that he hath of late times frequently beaten and abused her without any cause or reason'. Anne Harwood and Mary Rawnforth, two neighbours of Ellen, recalled reproving her for keeping company with another woman's husband and both connected it to Joseph's resulting ill-treatment of his wife. Ann Medd commented that the matter had recently been resolved so that Joseph and his wife now lived 'very quietly and comfortably together'.⁷¹ When Margaret Gordon of Boleham, Northumberland, complained at the quarter sessions about her husband's abuse, in 1695, she opined that Margaret Roullish, his lover, was 'the great occasion of all this disention' between the couple.⁷²

According to the orthodoxy of the double-standard, wives had no option but to silently turn a blind eye to their husbands' adultery, or resignedly accept them back after an affair. Roderick Phillips argues that, '[male] adultery was incorporated within the expectations of marriage or was tolerated when it occurred, or was discovered, on an ad hoc basis.' He believes that it was only when other circumstances aggravated the offence (rather than the offence itself) that marriages broke down.⁷³ The quarrels caused by male adultery, however, demonstrate that it was not so straightforward. A deponent in the adultery separation of Dorothea and Godfrey Wentworth overheard Dorothea ask her lover what his wife would say if she knew the two were together. He replied that his wife was a good natured woman and he could go when and where he pleased.⁷⁴ This does rather suggest that many wives did not permit such licence. Although economic

⁷¹ BI, C.P. H/4349, *Office c. Lambe*, 1694. See also Foyster, *Manhood*, pp. 82-4.

⁷² Margaret had been heard to say that Adam Gordon 'should be welcom [sic] to her at midnight or cockcrow'. She was bound over to appear at the next sessions. NRO QSB 7, fols. 4-5; also QSB 58, Michaelmas 1722, fols. 40-1.

⁷³ Roderick Phillips, *Untying the knot. A short history of divorce* (Cambridge, 1991), p. 106

⁷⁴ BI, *Wentworth c. Wentworth*, 1756

and social circumstances prevented marriage breakdown, adultery was considered to be a major betrayal by whichever spouse was on its receiving end. Indeed male adultery was seen as a form of abuse against a wife. In a separation for cruelty against John Bowness, one of the articles alleged that he had returned late from a trip to Darlington in 1744 and informed his wife that he had a woman in Darlington, another in Aycliffe, and many others, all of whom he liked better than her. This was accepted to be likely to distress Anne Bowness.⁷⁵ Even 'Philogamus' remarked that the husband's infidelity was 'one of the first and principal Causes of the Wife's Unhappiness'.⁷⁶

V

Where the sexual double-standard unequivocally hit hardest was on the financial results of unchastity for the adulterous spouse. Unfaithful men simply did not face the same degree of economic disabilities as adulterous women. Legally, if a wife committed adultery, as well as losing custody of her children, her husband was no longer required to pay for her maintenance, nor could she use the law of agency.⁷⁷ This may explain why men were more likely to proceed to sentence than women were when they sued for separation. Although men initiated a minority of separation suits in the church courts, they dominated adultery separations and had more success in gaining a formal decree.⁷⁸

Obviously, in so far as a judicial separation permitted, male plaintiffs sought to formally escape from a distressing emotional relationship. Some used ecclesiastical separation as a necessary precondition to a parliamentary divorce. In a cause that began at Chester in 1760 and was appealed to York in 1766, Mary Manwaring claimed that Roger

⁷⁵ DDR, *Bowness c. Bowness*, 1745.

⁷⁶ Philogamus, *Present State of Matrimony*, pp. 64-5.

⁷⁷ Burn, *Ecclesiastical Law*, vol. 2, p. 43. See also Coote, *Ecclesiastical Courts*, p. 348. Interestingly, the alimony allotted in private separation contracts was not always dependent upon the behaviour of the wife since adulterous woman could negotiate maintenance from estranged husbands. Susan Staves, 'Separate Maintenance Contracts', *Eighteenth Century Life*, 11, (1987), 82.

⁷⁸ Neither of the two wives who prosecuted their husbands for their adultery proceeded this far. Separation was granted to sixteen out of the twenty-one husbands who came before Durham and York ecclesiastical courts. In one case, this was despite the fact that the defendant never appeared or even employed a proctor.

Manwaring had offered her £1500 to consent to the separation so that he could then obtain an act of parliament to dissolve their marriage. Both spouses were the offspring of baronets and childless after fifteen years of marriage. Perhaps Roger sought an heir; certainly, he had taken a mistress, got her with child, and then proceeded to accuse his wife of adultery.⁷⁹ For Hooker Barttelot, his 1793 judicial separation was the step after his criminal conversation case of 1790, against Samuel Hawker, his wife's lover, and the precursor to his attempt to gain a parliamentary divorce in 1798.⁸⁰ Nevertheless the common feature of adultery separations was that, on being granted one, husbands were released from having to pay for their wives' upkeep for the rest of their lives.⁸¹ The relationship between private separation contracts and separation for adultery strengthens the proposal that men primarily sought financial relief when they used the church courts. A number of the couples who appeared had been parted for several years; three of them had already entered a deed of separation or a bond that settled a maintenance upon the wife.⁸² So in these instances, separation was not at issue. But, if husbands obtained proof of their estranged wife's adultery they would save on maintenance.

In terms of social disabilities, however, the sexual double-standard was more opaque. It was not simply that men's reputation did not include sexual honour, whereas women's was solely bound up with their sexuality. Traditionally, male reputation is considered to have depended upon status and life-cycle, consisting in varying degrees of 'lineage, wealth, occupation and conduct'.⁸³ Recent historians have been eager to show that men's honour rested upon the sexual reputation of their wives.⁸⁴ The notion that his wife could

⁷⁹ BI, *Manwaring c. Manwaring*, 1761. The case probably failed due to recrimination.

⁸⁰ BI, *Barttelot c. Barttelot*, 1793.

⁸¹ It also bastardised the wife's future children, which a private arrangement failed to do, *Divorce*, p. 159.

⁸² BI, *Wentworth c. Wentworth*, 1756; *Chaworth c. Chaworth*, 1760, deposition of Charles Bellamy; *Barttelot c. Barttelot*, 1793. Financial considerations themselves motivated a private separation contract in the first place. See chapter two, p. 33.

⁸³ Faramarz Dabhoiwala, 'The construction of honour, reputation and status in late seventeenth- and early eighteenth-century England', *Transactions of the Royal Historical Society*, Sixth Series, VI (1996), 203.

⁸⁴ Foyster, *Manhood*, p. 55. See also Laura Gowing, 'Language, power and the law: women's slander litigation in early modern London' in Jenny Kermode & Garthine Walker (eds.), *Women, Crime and the Courts in Early Modern England* (London, 1995), p. 30; Polly Morris, 'Defamation and Sexual Reputation in Somerset, 1733-1850' (University of Warwick, PhD Thesis, 1985), pp. 310, 616-7.

damage a husband's reputation had a wide purchase throughout the century. In 1715, Sir Peter Vavasour's servant informed him that there were suspicions about Lady Jane's fidelity. The servant left the family shortly afterwards being, in his words, sensible that the courses Lady Vavasour took would ruin Sir Peter.⁸⁵

This is particularly evident in defamation suits brought by men to defend their good name when it was threatened by an accusation of cuckoldry. William Smith was a widower when he married his nineteen year-old wife in 1775. Flighty and flirty, Eleanor was totally unsuitable as a vicar's wife. As we have seen, in 1787 a plasterer and a husbandman spied on Eleanor with her lover and gossiped about it in the neighbourhood. William believed his wife when she told him the rumours were lies and took prompt action. First he went to the plasterer's master and complained about his apprentice's behaviour. The master accompanied William to a private sessions of the justices of the peace where he made his complaint. One of the justices agreed that William had suffered a great injury from having his wife's character so defamed. Consequently, Thomas Telfer, the apprentice, was reprimanded by his master, and promised not to talk of the affair, and he was not sent to do any further work for William. Reverend Smith's loss of face was all the greater when he discovered that the men had not lied.⁸⁶

Advertising husbands also sought to publicly distance themselves from their wives' infidelity. Nearly 7% of the adverts that referred to wives eloping, described or named the man with whom the wife had left.⁸⁷ More usually they used the term 'elopement' which conjured up the idea that the woman had run off with another man. Even those adverts that went no further than to accuse the wife of economic incontinency may have had a sub-text. Margot Finn observes that didactic texts often linked women's

⁸⁵ BI, *Vavasour c. Vavasour*, 1715.

⁸⁶ DDR, *Smith c. Smith*, 1789.

⁸⁷ For instance, *The Newcastle Chronicle*, 31 August 1765, p. 3.

uncontrolled spending to their uncontrolled sexuality.⁸⁸ In this vein, Sir Peter Vavasour coupled his wife's encumbering him with debts with her adultery, by claiming that, in league with her lover William Parker, Sir Peter's steward, she embezzled several sums of money from him.⁸⁹ Still, if controlling their wives' sexuality was so fundamental to men's reputation, why did the advertising husbands willingly risk being identified in public as a cuckold? Admittedly, the adverts may have been placed as damage limitation rather than from choice. Yet, eighteenth-century men did not have a choice between their sexual and economic reputation; economic and moral values were intertwined. Plainly, these middling-sort northern men were aware that their reputation was more at risk from their wives' economic promiscuity than from her sexual promiscuity.

Strikingly, there is a range of evidence that men found their own sexual reputation precarious. Male honour was damaged by male infidelity.⁹⁰ In 1684 William Addison, a yeoman of Swainston, in Sedgfield, petitioned the Bishop of Durham, as well as the city's Justices of the Peace, complaining that his daughter was cohabiting with a married gentleman, Thomas Ashmall. As well as admonishing his daughter for living in this manner, instead of working honestly for her living, William had related to Ashmall 'what Reproach & Discreditt it was for A Gen[tleman] to Abandon & forsake his Lady & Children and to admitt A whore in her place, desireing him for Gods sake that she might receive due punishment for her Offences and to call home his Lady & Children'.⁹¹ A century later, the susceptibility of male personal sexual reputation was used by one unhappy wife to her own advantage. In the style of conventional adverts, Mary Burrell announced that her husband, a potter at Hilton Ferry near Sunderland:

⁸⁸ Margot Finn, 'Women, Consumption and Coverture in England c 1760-1860', *The Historical Journal*, 39, 3 (1996), 703-5; Dabhoiwala, 'construction of honour', p. 207.

⁸⁹ BI, *Vavasour c. Vavasour*, 1715.

⁹⁰ Capp, 'Double Standard Revisited', pp. 70-2.

⁹¹ DDR, Petition by William Addison of Swainston, Sedgfield. Thomas had responded that he would keep the petitioner's daughter fast from all danger and answer the law both for her and himself. William wished to have his daughter placed in the house of correction as punishment. The ecclesiastical court excommunicated Mary Addison, but the matter remained in suspense because William Addison was too poor to manage the proceedings against Thomas. Eventually, in September 1685, Thomas Ashmall was ordered to be taken prisoner after being excommunicated for refusing to pay fees and to perform penance.

has for some Time past absented himself from me his lawful Wife, and has co-habited with another Woman, named Mary Henderson, who, I am informed, is now lying-in of a Child by him: I therefore think myself justified in thus informing the Public of his adulterous Proceedings, and of his having left me destitute, without in the least contributing to my Support, in order that the World may have a just sense of his infamous Conduct, and treat him with the Contempt he so highly merits.⁹²

In both these cases, male sexual reputation was linked to his economic obligation to provide for his wife.⁹³

Men themselves feared public knowledge of their adultery.⁹⁴ When the married Reverend James Robertson's maid told him of her pregnancy in 1754, he threw himself on the bed, cried bitterly and wrung his hands saying he would be ruined.⁹⁵ It was not just those who had to set an example to the community who were concerned. Significantly, men also brought defamation prosecutions against those who accused them of adultery.⁹⁶ For example, George Smith, a gentleman of Trimdon, sued Isaac Steer in 1746 because during a quarrel Isaac had shouted, 'George makes as much use of Jane Gowland ... as you do of your own wife'. A deponent confirmed that George, a married man, found his good name was very much injured among his neighbours because of this accusation.⁹⁷ The manager of a York station wagon line placed an advert in the press in which he denied having been found 'in some unlawful and scandalous familiarity' with another man's wife. This gossip appeared to be affecting his business.⁹⁸ In a sorry tale reported in *The Newcastle Courant* in 1739 a Carlisle man received

⁹² *Newcastle Chronicle*, 1 November 1783, p. 3.

⁹³ See chapter seven.

⁹⁴ Capp, 'Double Standard Revisited', pp. 72-3.

⁹⁵ DDR, *Office c. Robertson*, 1755.

⁹⁶ Of a random selection of fourteen defamation cases brought before Durham consistory court citing accusations of adultery between the 1740s and 1780s, five were brought by married men and nine by married women. For the theory that male interest in bringing such defamation cases declined after the mid-eighteenth century see Morris, 'Defamation', p. 605.

⁹⁷ DDR, *Smith c. Steer*, 1746. See also *Tindall c Hindmarsh*, 1758.

⁹⁸ John Jefferson Looney, 'Advertising and Society in England, 1720-1820: A Statistical Analysis of Yorkshire Newspaper Advertisements' (Princeton University, PhD thesis, 1983) p. 218.

'verbal Correction' from his wife for his 'Familiarity' with another woman. He immediately went to the river and drowned himself.⁹⁹

If male honour was not influenced by their own sexual behaviour, it is difficult to understand why men who were accused of adultery in church court prosecutions frequently denied the allegation, usually with the defence that it was made out of ill-will. William Newton was presented by Kirkby-in-Ashfield's churchwardens for adultery and getting his servant with child, at Nottingham's Archdeaconry Court, in 1705. His defence was that another man had fathered Catherine Donnelly's baby and then fled into the army. He accused the local rector, with whom he was in dispute about tithe hay, with inciting the rumours. The rector even, according to William, blackmailed the seventy-one year-old midwife, who delivered Catherine's baby (by threatening to destroy her), into claiming that Catherine had confessed that her master was the father.¹⁰⁰ Clearly such men felt there was too much at stake simply to deny the accusation.

VI

The insistence upon incommensurate reputations for men and women appears even more problematic when female honour is explored in detail. Several studies insist that the sexual double-standard meant that female reputation, in contrast to male reputation, was wholly predicated upon sexual behaviour. The notion is especially prevalent among historians who focus upon defamation causes at the church courts and prescription.¹⁰¹ Obviously, sexual honour was important and adultery shamed women. So much so, that in the eighteenth-century it was often cynically observed that fear of public shame prevented immorality more than any sincere moral concern. *The Newcastle Courant*, in

⁹⁹ *Newcastle Courant*, 4 August 1739, p. 3.

¹⁰⁰ BI, Trans. C.P.1707/1, *Office c. Newton*, 1707.

¹⁰¹ J. Sharpe, 'Defamation and Sexual Slander in Early Modern England: The Church Courts at York', *Borthwick Papers*, 58, p. 28; Martin Ingram, *Church Courts, Sex And Marriage, 1570-1640* (Cambridge, 1987), p. 302; Anthony Fletcher, *Gender, Sex and Subordination 1500-1800* (London, 1995), p. 104; *Dangers*, p. 2.

1751, reported that an eminent dealer in Banbury returned from work and caught a man in bed with his wife. Getting help, he took both out of bed, tied their arms together, sat them on the floor before a fire and had beverages served. He then invited neighbours in to watch, and in 'this Manner he exposed his Wife and her Gallant for some Hours, which seem'd a greater Mortification to them than any Thing else he could have done'.¹⁰²

Married women who were publicly branded as unfaithful could face social stigma. For instance, adulterous women were sometimes unable to find lodgings.¹⁰³ The composition of their social circle could change. Dorothea Wentworth, the daughter of a baronet, separated from her husband in 1749 and lodged in Knaresbrough. She mixed with people of a lower rank, including flax dressers, and a writing master, because, after two or three years, she had acquired a bad character which meant that 'few of the better sort of people in Knaresbrough would admit of any visits from her'.¹⁰⁴ The stigma could affect work prospects. According to John Ferman, a confectioner, in Newcastle, his wife eloped with Isaac Dixon, in 1789, to Ripon. There she attempted to keep a school, but people heard of her 'bad character and who she was, [and] withdrew their children from her'.¹⁰⁵ Female reputation was even judged on appearance. Mary Buckler, a twenty-three year-old glover, lodged in 1731 at an inn, in Chester, with a friend whose husband was away. There she met Jane Holyman who was sued the following year for separation on the grounds of her adultery. Seeing Jane at the fireside and 'observing her to be very Loose in her dress' she concluded that she was not a very good person.¹⁰⁶

¹⁰² *Newcastle Courant*, 9-16 March 1751, p. 2.

¹⁰³ See, BI, *Holyman c. Holyman*, 1730; *Vavasour c. Vavasour*, 1715; DDR, *Ferman v Ferman*, 1801.

¹⁰⁴ BI, *Wentworth c. Wentworth*, 1756.

¹⁰⁵ DDR, *Ferman c. Ferman*, 1801.

¹⁰⁶ BI, *Holyman c. Holyman*, 1730.

The frequency with which women used the church courts to defend their own sexual reputation in the seventeenth-century is well known and continued in the next.¹⁰⁷ Wives brought defamation suits to Durham consistory court, for example, when they were accused of an affair, or of being another man's whore. Some brought a case against a defendant for spreading rumours, and one prosecuted a defamer for crudely telling her husband that he had sex with her as often as his own wife.¹⁰⁸ Ann Allison complained in 1764 that her good name, character and reputation had been injured by Robert Nicholls, a surgeon of Sunderland, who declared that Thomas Wilson, an attorney, had 'Fuck'd Allisons Wife'.¹⁰⁹ Women also used other means to defend their sexual honour. A century earlier, William Henshall, of Bradbury in the diocese of Chester, sued Anne Wettenhall for jactitation. A couple of deponents on behalf of William accused Anne of both general and specific lewdness. In response, Anne gained a petition in April 1673, signed by sixty-five male inhabitants of Stockport (some of whom were related to her husband, and others of whom were churchwardens and aldermen) which certified that during her three years of residency she had educated young children, demeaned herself honestly, and been of honest life and conversation.¹¹⁰

But it is a serious mistake to isolate female sexual reputation. Chastity was not the sum of female honour, it was merely one part. In her response to a prosecution for fornication with a married man, at Durham Consistory Court in 1674, Elizabeth Myres, the widow of a Durham City alderman, proposed that the deponents would confirm her good name, fame, credit and reputation for honesty, good life and conversation, her charity and her religion.¹¹¹ All were qualities that male householders would be glad to display and protect. As Faramerz Dabhoiwala remarks, '[i]n practice, female sexual

¹⁰⁷ *Dangers*, pp. 33-6; Tim Meldrum, 'A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-1745', *London Journal*, 19, 1 (1994), 5-6.

¹⁰⁸ DDR, *Nelson c. Cook*, 1770.

¹⁰⁹ DDR, *Allison c. Nicholls*, 1764.

¹¹⁰ BI, C.P. H/5241, *Henshall/Henshaw c. Wettenhall*, 1673.

¹¹¹ BI, Trans. C.P.1674/3, *Office c. Myres*, 1674. For similar findings in the sixteenth-century, see T. Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998), pp. 192-3, 223.

dishonour was thus a Damoclean sword, not a patriarchal ton of bricks'.¹¹² Newspaper advertisements placed by husbands clearly reveal that the relationship between the sexual, social and economic components of women's honour is impossible to unravel.¹¹³ In spite of the allusions in some advertisements to sexual infidelity, their wording such as 'warning', not to be trusted, 'a caution to the public', and descriptions of the behaviour of the wife as 'indifferent', 'indiscreet', 'unaccountable' or 'scandalous', attacked both female economic and sexual honour.

Crucially, women prized their economic and household reputation as much as their sexual reputation; so any attack on their status as a housewife was a slur on their honour.¹¹⁴ Women displayed anxiety about potential dishonour in their replies to adverts placed by their husbands. Elizabeth Bowie vocalised what her husband's advert symbolised, her failure as a wife, when she indignantly responded in the following issue that he 'hath scandalously defamed me ... by alleging that I have been undutiful'.¹¹⁵ Husbands were well aware of the effect upon their wives of advertising, which used the language of trust and its betrayal. In 1788, Andrew Drysdale of Newcastle retracted his announcement that he would not be accountable for the debts of his wife, apologising, 'in Justice to her Character I think proper to declare, That a too hasty Belief of a false

¹¹² Factors like rank and wealth could override female sexual conduct. Dabhoiwala, 'construction of honour', pp. 208-11.

¹¹³ Work on defamation cases before London consistory court between 1700 and 1745 shows how imputations against women's sexual reputation threatened their business or trade. Tim Meldrum, 'A Women's Court', pp. 12-15. Of forty defamation cases between 1770 and 1810 that came before London Consistory Court, one quarter of the female plaintiffs had their own business or were involved in that of their husbands'. They acted in order to protect their credit. Anna Clark, 'Whores and gossips: sexual reputation in London 1770-1825' in Arina Angerman, Geerte Binnema, Annemike Keunen, Vefie Poels, and Jacqueline Zirkzee (eds.), *Current Issues in Women's History* (London and New York, 1989), p. 239.

¹¹⁴ Simply calling a woman an idle housewife was a common insult in early modern England and attacked feminine identity. Garthine Walker, 'Expanding the boundaries of female honour in early modern England', *Transactions of the Royal Historical Society*, Sixth Series, VI (1996). 238-9

¹¹⁵ Advert by Archibald Bowie, a wherryman in South Shields, refusing to pay any debts his wife contracted because she had eloped from him and taken certain sums of money with her. *Newcastle Journal*, 31 January- 7 February 1756, p 3; 7-14 February 1756, p 3. See also BI, *Whatmore c. Whatmore*, 1788. Rebecca claimed that Charles had tried to 'defame' and 'misrepresent' her in the eyes of the public by publishing an advertisement in *The York Courant*, 25 November 1788.

presentation of her Conduct, was the Occasion of that imprudent Step, - and which I now recollect with the severest regret'.¹¹⁶

¹¹⁶ *Newcastle Chronicle*, 3 November 1787, p. 2; *ibid.*, 10 November 1787, p. 3.

CHAPTER SIX:

'depravity increases, and virtue loses its force':

Changing attitudes to cruelty and adultery.¹

I

The long eighteenth-century is identified as the site of both continuity and change in terms of cruelty and adultery. Again, this is somewhat dependent upon sex. Roderick Phillips argues that in the early modern period wife-beating was socially and legally tolerated and was common in its moderate forms.² Neither it, nor male adultery was a sign of marital breakdown. Women were penalised in both cases by either economic dependence or the sexual double-standard. At the same time, it has been recognised that both phenomena underwent change. From the late eighteenth-century, wife-beating was either less tolerated or forced into private.³ It is also proposed that the period was one in which attitudes towards extramarital sexual relationships were more tolerant.⁴ The Act passed in 1650 for 'suppressing the detestable sins of Incest, Adultery and Fornication', which imposed the death penalty for wives convicted of adultery, and imprisonment for male fornicators, was ended after the Restoration.⁵ Thereafter, Lawrence Stone identifies a shift 'away from regarding illicit sex as basically sinful and shameful to treating it as an interesting and amusing aspect of life'.⁶

¹ *The Newcastle Courant*, 5 March 1791, p. 2. This refers specifically to adultery.

² Roderick Phillips, *Untying the knot. A short history of divorce* (Cambridge, 1991), pp. 97-102.

³ *Divorce* pp. 203-6. One study argues that the shift away from public view occurred in the first half of the eighteenth-century, Margaret Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth-Century London', *Gender & History*, 4 (1992), 27. Another argues that it occurred in the mid nineteenth-century, Nancy Tomes, 'A "Torrent of Abuse": crimes of violence between working-class men and women in London, 1840-1875', *Journal of Social History*, 11, 3 (1978), 341.

⁴ Phillips, *Untying*, p. 106. See also Roy Porter 'Mixed feelings: the Enlightenment and sexuality in eighteenth-century Britain', in Paul-Gabriel Bouce (ed.), *Sexuality in eighteenth-century Britain* (Manchester, 1982), pp. 9-14.

⁵ Quoted in Brian Outhwaite, *Clandestine Marriage in England, 1500-1850* (London, 1995), p. 11.

⁶ A minority (such as bishops and conservative peers) remained convinced that immorality was increasing, that members of the elite were particularly guilty, and that it was wives who were to blame. *Divorce*, pp. 248, 256-7.

II

There is plenty of evidence that wife-beating was socially rejected.⁷ It was shown in chapter four that tyrannical male behaviour was criticised. Indeed, both Susan Amussen and Anna Clark have shown that, throughout the early modern and modern periods, there were social, cultural and legal limitations upon male abuse of authority over dependants.⁸ As chapter two demonstrates, neighbours and friends intervened to control marital violence. The actions of community members frequently displayed distaste for male abuse. James Lees of Manchester received an anonymous letter when his wife sued him for cruelty:

Thou old whoremonger
I formerly wrote to thee about the sufferings of thy wife I told thee
when thy trial did come on I would bear witness against thee I did
hear the other day that thou art to be tried next week which I am glad
of.⁹

Occasional evidence of ritual displays against wife-beaters arises. For example, seven chair-bearers were fined 20d. each and imprisoned for a day, for dragging James Smith, centinel of the guard, 'out of a Cellar into the Streets, and putting a long Pole betwixt his Legs making him *ride the Stang* about the Streets, on account of his having disciplin'd his Wife too severely'.¹⁰ Many servants deposed in cruelty separation suits that they left their employment when their contract was up because they objected to working in a household where violence occurred. They clearly felt that such behaviour was unusual or, at least, unacceptable.¹¹ Consequently, spouses attempted to hide violence, which

⁷ Some of the men imprisoned in the house of correction, for failure to get sureties, may have been unable to get them because they had a poor reputation and were not trusted to keep the condition of the recognizance to desist from wife-beating. Although it could simply have been because they were poor. Thus, their social status may have restricted their ability to call upon people who would enter into a bond on their behalf.

⁸ Amussen, "'Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England', *Journal of Women's History*, 6, 2 (1994), 70-89; Clark, 'Humanity or Justice? Wifebeating and the law in the eighteenth and nineteenth centuries' in Carol Smart (ed.) *Representing Womanhood: Historical Writings on Marriage, Motherhood and Sexuality* (London, 1992), pp. 187-206.

⁹ BI, Lees c. Lees, 1803.

¹⁰ *The Newcastle Courant*, 30 June 1739, p. 1. For a debate about such rituals, see A. J. Hammerton, *Cruelty and Companionship: Conflict in nineteenth-century married life* (London, 1992), p. 15-33.

¹¹ See, BI, Lees c. Lees, 1803.

was not always the public street theatre described by Hunt, in the early part of the period.¹² In the 1670s, Grace Allenson endeavoured to conceal her husband's ill-treatment.¹³ In the 1740s, Francis Gomeldon and Thomas Wright beat their wives behind locked doors, or at night, to prevent the possibility of witnesses, but also to hide their treatment of their wives.¹⁴

Community members expected marital violence to be resolved or controlled. A rough attempt can be made to estimate the duration of violence in separation suits by recording the time between the date that violence was alleged to have begun and the date of the Libel. Although over 61% of women endured violence for no longer than six years, and 20% put up with it for less than a year, nearly 15% of the women suffered the violence for over six years, and 13% for over 10 years.¹⁵ Chapter two reveals that wives frequently attempted to resolve violence through private mediation or public arbitration and prosecution by justices of the peace, before turning to a separation suit. Thus, some of those who had apparently been in the violent relationship for a long period had already sought assistance prior to the suit, or been separated for some years before resuming a relationship. Margaret Lees explained at the turn of the eighteenth-century that she had only remained with her terrorising husband because her lawyer gave her the wrong advice.¹⁶

Failing resolution, it was assumed that women would escape the most extreme relationships. Mary Foster was a widow, but lived as the wife of Robert Wilkinson. Having failed in business, he lived with Mary in her house and brandy shop in Durham

¹² Hunt, 'Wife Beating', p. 23.

¹³ BI, *Allenson c. Allenson*, 1676, Frances Turner's deposition. C.f. James Currie's claims that he hid Jane's ill-usage of him in order to avoid the ruin of his reputation. BI, *Currie c. Currie*, 1729.

¹⁴ DDR, *Gomeldon c. Gomeldon*, 1741; DDR, *Wright c. Wright*, 1745.

¹⁵ Seventeen percent of fifty-four Scottish wives who sought separation on the grounds of cruelty endured violence for under one year, 40% over one year and under six years, 42% over six years. Leah Leneman, "'A tyrant and tormentor': violence against wives in eighteenth- and early nineteenth-century Scotland", *Continuity and Change*, 12, 1 (1997), 35.

¹⁶ BI, *Lees c. Lees*, 1803.

City. According to the newspaper report of her murder in 1743, he drank the stock and became cruel, 'which increas'd by his giving Way to his Passion, and from Words proceeded to Blows, till it became the Surprise of the whole Neighbourhood, that she did not leave him, and seek her Bread where she might obtain it with more Peace and Satisfaction, than she might be sensible she could do with him; but such was her Infatuation, that, notwithstanding the many Wounds and Bruises he had lately given her, ... she still continu'd with him'.¹⁷ Plainly, Mary was supposed to leave Robert even at the cost of her own livelihood. Perhaps her refusal to swap her own property for safety informed her ultimately fatal choice. Economic conditions made it very difficult to leave a violent relationship, but beaten wives were not left without recourse to a web of assistance.

III

Views that wife-beating was accepted often pivot on the legal failure to define cruelty, usually concluding that since low levels of violence were not forbidden, then wife-beating in general was acceptable. Yet the one does not have to follow from the other; arguably, 'minor' forms of marital violence could exist alongside a wholesale intolerance of wife-beating.¹⁸ There is no clear evidence that wife-beating was particularly accepted by the authorities. Phillips suggests that the small number of prosecuted cases is part of the general picture that suggests it was widely tolerated.¹⁹ But small numbers of cases reached the courts because most incidents of domestic violence were dealt with informally, by seeking help from family, neighbours, friends, and local officials. The same was probably true of other types of misdemeanour. Correlating numbers of wife-beating cases with levels of tolerance is made even less useful by evidence that there was a relationship between the extremity of violence

¹⁷ *The Newcastle Courant*, 19-26 March 1743, p. 2.

¹⁸ This could be said to exist in our own society.

¹⁹ Phillips, *Untying the knot*, pp. 100-2.

complained about and the level to which a defendant was prosecuted. So magistrates out of court dealt with most occasions of threatened violence.

The formal assistance given to wives by secular law was not simply for those who suffered extreme acts of violence. Theoretically, the threat of abuse was enough to obtain both a warrant and surety for the peace because a justice was obliged to provide surety when complainants stated under oath that they feared threat to their body. As Burn remarked, 'it is certain, a *wife* may demand it against her husband threatning [sic] to beat her outrageously' (as could a husband).²⁰ About one-fifth of wife-beating incidents in the justices' notebooks related to the husband's threat to beat his wife, although, interestingly, it was most often phrased as threatening the wife's life. Edmund Tew recorded on the 24 May 1760, 'G[ranted] G[eneral] Warr[an]t ag[ain]st Lancelot Byars of M[onk]wearmouth Master & Mariner for threatening to kill his wife Mary Byars'.²¹ What tended to happen was that these cases were dealt with by mediation or warrant.

Less than a quarter of the violent men who came before the four magistrates went on to be bound over by recognizance. It was physical violence against wives that was prosecuted by recognizance and indictment. So, for example, over 91% of the violent husbands who appeared before the northern courts of quarter sessions were prosecuted by recognizance. It is likely that cases that got this far comprised severe physical acts of cruelty. Even so, surety for the peace was relatively easy to acquire, granted without an investigation into the truth of the complainant's allegations.²² Nor did the courts dismiss men who committed minor levels of violence. For example, when William Ettrick appeared before Durham Quarter Sessions in response to his wife's complaint, he

²⁰ Richard Burn, *The Justice of the Peace and Parish Officer* (4 vols, London, 1785), vol. 4, p. 248. Margaret Hunt's contention that articles of the peace were only available for very serious cases is misleading, Hunt, 'Wife Beating', p. 18.

²¹ DRO D/X 730/1. Unpaginated.

²² M. E. Doggett, *Marriage, Wife-beating and the Law in Victorian England* (London, 1992), pp. 11-12.

admitted that he had only hit his wife a 'Box on the Ear'. Nevertheless, the justices continued him upon his recognizance for his good behaviour to his wife until the next sessions.²³ This throws some doubt on Margaret Hunt's speculation that justices of the peace believed men had the right to beat their wives.²⁴

Wives' indictment of their husbands, a more formal means of punishment, potentially resulting in formal conviction and punishment, was probably restricted to the most violent of men. Although any party granted surety for the peace could go on to punish the offender by indictment, only twenty of the 153 violent husbands who came before the northern courts of quarter sessions were indicted.²⁵ The limited use of indictment was not due to the fear that bills against wife-beaters were destined to be thrown out. The grand jury was not reluctant to find a preferred bill against a wife beater and violent husbands were not peremptorily discharged. In all, 45% of the indicted husbands were discharged, that is six indictments were not found by the grand jury and three of the eight true bills were acquitted by the petty jury. It is difficult to be conclusive about the outcome of six cases.²⁶ Most of these, however, were treated as if they had been found guilty because, although their indictments were not recorded as true, their bills were repeatedly respited from session to session. Unfortunately, it would be speculative to compare this with Cockburn's findings that a little over half of all those indicted at the North Riding Quarter Sessions were convicted, between 1699 and 1750.²⁷ What is clear,

²³ BI, *Ettrick c. Ettrick*, 1765. CP.I/1528, Ralph Sander's deposition.

²⁴ Hunt, 'Wife beating', p. 18. Neither justices' notebooks, nor quarter sessions records give any indication of such an opinion.

²⁵ In eighteenth-century Middlesex only a third of all bound-over defendants were indicted. The number of husbands, who were indicted, at 14% of the 140 recognizances, is therefore very low. Feasibly, however, some of the other 120 northern recognizances led on to an indictment. Clerks did not always indicate when bound-over defendants were also indicted and it is estimated that the number of recognizances against which defendants were indicted was about 20% higher than would appear from clerical notations. Robert Shoemaker, 'Using Quarter Sessions Records as Evidence for the Study of Crime and Criminal Justice', *Archives*, 20, 90 (1993), 147, 155-156.

²⁶ Three men had their bills respited and three are unknown because, following the preferment of the bill, the husband was simply recorded as being in the house of correction and no further record was found (one of them was perhaps a true bill). (Two men pleaded guilty, eleven pleaded not guilty, although two of them were still convicted. The pleading of seven of the men is unknown because the outcome of the indictment was not specifically recorded.)

²⁷ J. S. Cockburn, 'The Work of the North Riding Quarter Sessions in the early Eighteenth Century' (University of Leeds, Master of Law, 1961), p 74.

is that it was the combination of high costs and the eventual punishment of the convicted that hobbled women. An assault prosecution taken to indictment could cost at least £1.²⁸ Most importantly, the result of a guilty conviction was usually that the husband was bound-over to keep the peace.²⁹ So wives might just as well have had their husbands bound-over for breach of the peace in the first place at a far lower cost. After all, a warrant cost 1s. and a recognizance cost between 2s. 4d. and 4s. 4d.³⁰

This procedure does not necessarily reflect any especial tolerance of wife-beaters, since other perpetrators of misdemeanours were dealt with in the same way.³¹ Recognizances were not perceived to be a lenient form of prosecution and punishment. The spouses involved probably saw it as punishment in itself, although legally it was not. As Norma Landau observes, the defendant had to pay a fee for the recognizance and was bound to appear at the quarter sessions where he could be reprimanded.³² Bound-over husbands were discharged after a given time. Of the 140 husbands who were bound-over, the discharge of over 39% was traced.³³ Most were recorded as discharged at the next sessions and it is unclear whether they were released from their bond at the request of their wife. Recognizances were usually intended only to last to the next sessions.³⁴

²⁸ J. M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, 1986), pp. 41-7. According to Arthur Young, a rural northern labouring man earned between £11 and £14 annually in the 1760s. Thus a £1 assault prosecution was undeniably expensive. Quoted in William Page (ed.), *The Victoria County History of the Counties of England, A History of Durham*, Vol. II, p. 358.

²⁹ At least forty percent of the indicted wife-beaters suffered some form of punitive action. Fifteen percent of the outcomes are unknown. Five husbands were found guilty and were bound-over. Both men who pleaded guilty were fined and bound-over, and one of the men who pleaded not guilty was also fined. One was fined 1s. by Durham court of quarter session in 1758, and another 6d. in 1783.

³⁰ Beattie, *Crime*, p. 41; Robert Shoemaker, *Prosecution and Punishment, Petty crime and the law in London and rural Middlesex, c. 1660-1725* (Cambridge, 1991), p. 117. The latter cost no doubt debarred many labourers, or wives of labourers, from using them. They were more likely to seek mediation.

³¹ In the north-east, informal settlements were far more common than formal punishments. Contestants frequently agreed and discharged cases so that complainants outnumbered prosecutions. G. Morgan and P. Rushton, *Rogues, thieves and the rule of law. The problem of law enforcement in north-east England, 1718-1800* (London, 1998), p. 31.

³² Norma Landau, *The Justices of the Peace 1679-1760* (California and London, 1984), p. 207.

³³ Apart from the twenty indicted men, 28.57% are unknown, 39.28% discharged, and 16.42% in house of correction for want of sureties and then discharged, 1.42% failed to appear.

³⁴ Burn, *Justice of the Peace*, vol. 4, pp. 252-3. Presumably if all were satisfied about the husband's likeliness of keeping the peace in future, the recognizance would indeed be discharged at the sessions.

As Shoemaker shows, the discharge can be interpreted in several ways; it may mean that the prosecutor and defendant had agreed, or that the court did not think the case was worth pursuing.³⁵ Undeniably some wives actively initiated their husbands' discharge.³⁶ Five men were specifically recorded as discharged at the request of their wife. The attorney at law of William Rigby, a barber bound-over in 1786, informed the court that Rigby and his wife 'had accomodated [sic] the matter between them.'³⁷ Six men's bonds were forfeited through the failure of their wife to appear at the sessions and continue the prosecution.³⁸ Another ten men were continued in their recognizance or respited, probably with the input of their wives. Some of the men who were in the house of correction for want of sureties were released with their wives' agreement. Thus, Leonard Connel, committed in 1792 to Northallerton House of Correction, was discharged when he finally gave security with the consent of his wife.³⁹ Women had nothing to gain economically from discharging their husbands, since most of the men had continued to be able to work. Some probably believed their husband had learned his lesson or received sufficient warning or reprimand. Others were, perhaps, coerced.⁴⁰ Even so, it is tempting to speculate that the ability to discharge their husbands gave a few wives some bargaining power.

Overall, a quarter of the total number of alleged wife-beaters spent time either in gaol or the house of correction.⁴¹ The majority of these men (68%) were ordered to remain

³⁵ Shoemaker, 'Quarter Sessions Records', p. 155.

³⁶ If the person who craved the peace requested that it was not continued, when the defendant appeared at sessions, the recognizance would be discharged. A complainant who offered to release the recognizance would also encourage the court to grant its discharge. Burn, *Justice of the Peace*, pp. 255-6.

³⁷ NYCRO DC/SCB VI 2 1/1/3, film 0353.

³⁸ A recognizance was forfeited when the prosecutor failed to appear (without reason). Burn, *Justice of the Peace*, vol. 4, pp. 255-6. Ten percent of all cases recorded between 1850 and 1854 were dismissed because female complainants failed to appear at trial. Tomes, "'Torrent'", p. 333.

³⁹ NYCRO QSM/1792, p. 301.

⁴⁰ Reluctance to prosecute could be due to female fear of retaliation. Some nineteenth-century wives who appeared in court still refused to testify against their husband. Tomes, "'Torrent'", p. 333.

⁴¹ An act of 1720 enabled justices to commit those who were unable to find sureties to gaol or a house of correction. Thomas Skyrme, *History of the Justices of the Peace, Vol. II, England 1689-1989* (Chichester, 1991), p. 111. It is difficult to tell how reliable this figure is because of the differences in record survival. The evidence is weighted by the survival of calendars of prisoners, which reveal whether a husband was imprisoned for failing to gain sureties. Significantly, four of the eleven husbands who were ordered to provide a recognizance by Justices out of sessions also ended up in the house of correction or in prison.

there until the next court of quarter sessions.⁴² While this had the potential to keep them imprisoned for three months, most spent less time incarcerated, with only a tiny minority in the house of correction for over three months.⁴³ Repeat offenders were treated most harshly. One such man spent several periods in the house of correction, two were for the duration of a year. The men were incarcerated because they failed to get sureties rather than for the misdemeanour. It is not clear how far commitment to the house of correction by a justice constituted a conviction. Some authors of the manuals for justices thought so, as, no doubt, did those who were incarcerated.⁴⁴ Importantly, the failure to convict wife-beaters by penal punishment hardly represents tacit approval of their violent actions. Most assaults in general were treated likewise. In Essex quarter-sessions between 1748 and 1752 the main punishment for those convicted of assault was a nominal fine of 1s. or less. Only about 4% were imprisoned.⁴⁵

It is even feasible that magistrates ensured that some husbands were imprisoned, through the manipulation of the recognizance. Cockburn proposes that magistrates sometimes set exorbitant sums for the bond so that defendants were unable to get sureties and therefore had to be committed. Theoretically, a recognizance was tailored to suit the litigants' rank. So, the status of the husband, his occupation, financial means and the severity of the abuse could influence the amount of security demanded.⁴⁶ In the late seventeenth- and eighteenth-century, the bulk of violent northern men were bound over for £20 or £40.⁴⁷ The highest sums (up to £200) correlate with higher ranking men,

The suggestion that husbands were unlikely to be imprisoned and got powerful men in their circle of acquaintances to post bail is questionable. Hunt, 'Wife-beating', p. 19.

⁴² The length of time that fourteen of the husbands spent in gaol or the house of correction is unknown.

⁴³ It is difficult to track exact times spent imprisoned, and names in the calendars of prisoners do not always appear in the order books. Only 21% of those committed to the house of correction in Middlesex were still there when the next sessions met. Shoemaker, 'Quarter Sessions Records', p. 148.

⁴⁴ Shoemaker, *Prosecution*, pp. 38.

⁴⁵ It was late in the century when imprisonment became a general punishment. Peter King, 'Punishing Assault: The Transformation of Attitudes in the English Courts', *Journal of Interdisciplinary History*, 27:1 (1996), 49.

⁴⁶ The average recognizance in the nineteenth century was much higher than an average fine for assault. Doggett, *Wife-beating*, p. 12.

⁴⁷ William Shephard advised justices of the peace that the sum bound, and the number of sureties was at their discretion. He recommended that the principal should be bound at £20 and the two sureties at £10 each. *A Sure Guide for his Majesties Justices of the Peace* (London, 1663), p. 204.

and included a gentleman and a hostman of Newcastle. But bond sums were not solely dependent upon rank, since different yeomen could be bound-over for £100 or £20. Equally, some men appeared more than once and the sums they were bound-over with varied. Benjamin Bincke, a labourer in Yorkshire, was bound for £40 to be of good behaviour to his wife in 1754, but £20, two years later, for having left her and refusing to support her.⁴⁸

In sum, quarter sessions authorities aimed at a working balance between the punishment of the men and the protection of the women, while still ensuring that the husband continued to be able to support his wife. Imprisonment might have saved a battered wife from physical damage, but it economically damaged her since she was denied her husband's income until he found sureties and was released.⁴⁹ No doubt the authorities preferred to avoid imprisoning wife-beaters for long periods since that would mean that the parish would have to pay towards the upkeep of battered wives and families while the offender was incarcerated.

IV

Wife-beating was increasingly criticised during the course of the period.⁵⁰ The local press reported wife-beating unfavourably throughout the period, generally in two ways.⁵¹ One approach accentuated the inhuman and barbaric qualities of cruel husbands. A report in *The Newcastle Journal*, in 1772, showed how a Worcester man, who was committed to gaol for murdering his wife, had isolated her from family and friends and made her ill by continuous cruel usage. It referred to him as an 'inhuman person' and declared that his wife was 'entirely at his mercy'.⁵² A 1743 report about a sawyer who,

⁴⁸ NYCRO QSB/1754, 12 February, MIC 138; QSB/1756, 1 June, film 9001.

⁴⁹ One magistrate in 1875 felt hampered by the fact that if he sentenced a wife-beater, this simply broke-up the home through imprisonment and forced wife and children onto relief. Tomes, "'Torrent'", p. 334.

⁵⁰ Nonetheless, it was also reviled in the seventeenth-century in print. See *The Book of Homilies*, pp. 245-7. Most of the arguments against violence continued to be used in the next century.

⁵¹ Twenty accounts of male cruelty (in addition to reports of wife murder) were recorded from the sampled Newcastle and York newspapers.

⁵² *The Newcastle Journal*, 29 August-5 September 1772, p. 1.

after quarrelling with his wife, pushed her downstairs so that she fell head first onto a table at the foot of the stairs, furiously declaimed that, 'not contented, with what he had done, the sawyer then stamped several times on his wife's ribs'.⁵³ The second approach emphasised the stupidity and futility of the men's actions. *The Newcastle Courant*, despaired in 1763, that '-A Son of the Turf, having got Pot-Valiant, went Home, and finding his Wife had not illuminated his House, he broke all his own Windows'.⁵⁴

Still, there was some transition in the way violence was presented in newspapers as melodrama during the second half of the eighteenth-century. Adverts in *The York Chronicle*, 1785, for example, publicising the sale of printed accounts of separations heard before ecclesiastical courts, drew attention to the engravings that accompanied the texts. 'The Trial of John Hart' had three, two of which illustrated him strangling his wife, and beating her head against the chimney piece. 'The Trial of Isaac Prescott', advertised with the heading 'Matchless Barbarity', was 'embellished with a curious Frontispiece, representing Capt. Prescott cramming a handful of Mud and Cherries in his Wife's Mouth'.⁵⁵ In 1789 readers were enticed to buy the trial of Andrew Robinson Bowes for adultery and cruelty with its 'Frontispiece representing an unparalleled Scene of Cruelty'.⁵⁶ As Kali Israel remarks, 'guilt and innocence, villainy and victimization, stood in sharp opposition' in 'the language of melodrama'.⁵⁷

⁵³ He was immediately secured, confined in the Cage, and then committed to gaol. *The Newcastle Courant*, 8-15 January 1743, p. 2. Cruelty was also reported in a straightforward way, with disapproval equal to any other assault, see *The Newcastle Chronicle*, 18 February 1769, p. 2.

⁵⁴ *Newcastle Courant*, 14 May 1763, p. 1. See also *Newcastle Chronicle*, 26 November 1791, p. 2.

⁵⁵ *The York Chronicle*, 19 August 1785, p 3.

⁵⁶ *York Courant*, 18 March 1789. Of the cases which came before the magistrate Henry Fielding in 1752, that were published in his twice-weekly periodical *The Covent-Garden Journal*, the most detailed related to domestic violence, particularly wives beating husbands, due to their entertainment and titillating value. Lance Bertelsen, 'Committed by Justice Fielding: Judicial and Journalistic Representation in the Bow Street Magistrate's Office, January 3 - November 24, 1752', *Eighteenth-Century Studies*, 30, 4 (1997), 337-363.

⁵⁷ Kali Israel, 'French vices and British liberties: gender, class and narrative competition in a late Victorian sex scandal', *Social History*, 22, 1 (1997), 1-2.

Descriptions of male violence in the York and Durham Libels of separation suits shifted over the period.⁵⁸ Of the third of the plaintiffs who alleged that their husbands had *attempted* to kill them, most were from the seventeenth-century, as opposed to *threats* to kill them (60%) which were predominantly eighteenth-century (see Table 11).⁵⁹ By the mid 1760s, some suits before the church courts incorporated several forms of abuse as well as physical. In one case these included the husband whipping the horse his wife was riding in order to frighten her, leaving the room as soon as she entered, pulling her nose and calling her ugly, and failing to visit their baby when it was at nurse.⁶⁰ In the penultimate case of the century the cruelty was the husband's imprisonment of his wife. The rough divide parallels the broadening of the legal definition of cruelty applied by ecclesiastical courts over the period studied, culminating in the 1790 judgement, made by Lord Stowell in *Evans v. Evans*, after which the definition of cruelty was extended to include threats of violence.⁶¹

Table 11: Degree of violence described in Libels at York and Durham ecclesiastical courts.

<i>Category</i>	<i>N</i>	<i>%</i>
	47	100
Severe and/or attempt to kill	16	34.04
Less specific and/or threat to kill	28	59.57
Severe beating but not attempt to kill	2	4.26
Unknown	1	2.13

Cases of wife-beating before the courts of quarter sessions do not generally provide enough detail to trace developments in the representation of domestic violence. Nonetheless, the number of cruelty cases plotted over twenty-year periods show a leap in the level of husbands being bound-over for cruelty during the first two decades of the

⁵⁸ Categorising varying degrees of violence is subjective, so the allegation that a husband *attempted* to kill his wife and that he *threatened* to kill her was used in this study to crudely differentiate between 'types' of wife-beating. There was an identical transition in cruelty suits before the Court of Arches. John Biggs, *Concept of Matrimonial Cruelty* (London, 1962), pp. 21-2, 26. Also Leneman, "tyrant", p. 49.

⁵⁹ Two cases fell somewhere between the two, and one did not provide any information.

⁶⁰ BI, *Ettrick c. Ettrick*, 1765.

⁶¹ Henry C. Coote, *The Practice of the Ecclesiastical Courts* (London, 1847), pp. 349-50; Biggs, *Matrimonial Cruelty*, pp. 18, 24-6.

eighteenth-century. Levels remained relatively stable until the 1760s and nearly 40% of the 153 instances occurred in the last twenty years of the century (see Table 12). This transition does not indicate whether violence itself changed. Though the rise in recorded instances might be due to an increase in the incidences of wife-beating, it is more plausible that the growing intolerance of wife-beating provided more encouragement for wives to prosecute.⁶²

Table 12: Number of incidences of wife-beating at the courts of quarter sessions in the North Riding of Yorkshire, Northumberland, Durham and Newcastle, per 20 years.

<i>Years</i>	<i>N</i> <i>153</i>	<i>%</i> <i>100</i>
1661-1680	4	2.61
1681-1700	8	5.23
1701-1720	18	11.76
1721-1740	21	13.73
1741-1760	16	10.46
1761-1780	25	16.34
1781-1800	61	39.87

The figures are skewed by the availability of calendars of prisoners for the North Riding.

V

We have already seen that the sexual double-standard did not rigidly shape personal toleration of adultery.⁶³ There were, however, major shifts in the way adultery was discussed. By the last quarter of the eighteenth-century a romantic tone had infiltrated representations of adulterous affairs. A number of reported criminal conversation trials suggested that couples who did not marry voluntarily faced the collapse of their union.⁶⁴ The author of *Letters on Love, Marriage, and Adultery* pronounced in 1789 that opinions and laws relating to adultery were 'tyrannical', so 'it is savage and cruel to

⁶² Unfortunately, problems with styles of recording and survival of order books and bundles in the quarter sessions mean that no conclusions can be drawn. A similar explanation is offered for the rapid rise in Essex indictments for assault between 1750 to 1820. It was probably due to magistrates taking assault more seriously, rather than an increase in violent assaults. King, 'Punishing Assault', pp. 70-1.

⁶³ See chapter five, p. 97-101.

⁶⁴ In the debating societies, the increase in elite divorce and infidelity was often attributed to couples being forced by their parents into loveless marriages, purely for monetary reasons. Donna T. Andrew, 'Adultery a-la-Mode': Privilege, the Law and Attitudes to Adultery 1770-1809, *The Historical Association* (1997) p. 14. Also *Divorce*, pp. 259, 264.

make those young persons who are forced into unhappy marriages, answerable for the consequences of crimes, they would have been very glad not to have committed'. Instead, parents who coerced their offspring into wedlock should be punished.⁶⁵ During a 1794 criminal conversation case, in which the lover had been acquainted with the wife before she unwillingly married, Lord Kenyon romantically postulated that their love was re-kindled when the two met again. He advised, therefore, that damages be moderate.⁶⁶

Paradoxically, however, the latter part of the century witnessed renewed concerns about adultery among certain groups. This coincided with the period between 1770 and 1809 during which four parliamentary bills were presented to restrict divorce and punish adultery.⁶⁷ By the 1790s, according to Donna Andrew, there was an increasingly punitive tone in print, and adultery was equated with the collapse of civilisation.⁶⁸ This was certainly the tone of a judge in a 1791 criminal conversation, who claimed that infidelity 'struck at the root of private happiness, religion, morality, and the well-being of society'.⁶⁹ It is difficult to tell how widespread this stance was. For example, the parliamentary debates about the bills were widely printed in the Newcastle and York press, but in a neutral way, publishing the opinions of both sides.⁷⁰

Disentangling change in attitude from change in the vehicle of expression is problematic. For instance, there was a tendency to moral outrage by the end of the century in line with the fashionable tone of sentiment and sensibility, rather than cynicism or humour. In 1729 *The York Courant* reported that a Coffee man had brought

⁶⁵ Anon., *Letters on Love, Marriage, and Adultery; Addressed to the Right Honorable The Earl of Exeter* (London, 1789), pp. 85-9.

⁶⁶ *Howard v. Bingham*, *The York Herald*, 1 March 1794, p. 3.

⁶⁷ 1771, 1779, 1800, 1809. All failed. Andrew, "Adultery a-la-Mode", p. 5.

⁶⁸ This was linked to fears about the war with revolutionary France that stirred up calls for moral reform. Andrew, "Adultery a-la-Mode", p. 21.

⁶⁹ *Newcastle Chronicle*, 25 June 1791, p. 1.

⁷⁰ For example: *Newcastle Chronicle*, 15 May 1779, p. 1. Also *Newcastle Courant*, 20 March 1779, p. 3; 10 April 1779, p. 3; *Newcastle Advertiser*, 12 April 1800, pp. 1-2, 31 May, p. 2; 7 June, pp. 2-3; 14 June, p. 4.

an action against a Land waiter for criminal conversation and delightedly pronounced 'We hear the Trial is likely to be a very merry one'.⁷¹ *The Newcastle Chronicle* sanctimoniously pronounced in 1791 on the elopement of a twenty-two year-old married lady with a forty year-old justice of the peace from Whitby. Establishing that he had left 'an agreeable wife and several fine children', the author intoned 'We shall leave our readers to make their own comments on the above'.⁷²

Reconstructing the opinions of the northern population is problematic, because the declining overall use of the church courts means that there was a concomitant decline in office cases against adulterers. Of the forty-five cases prosecuting adulterers at York and Durham ecclesiastical courts (for which cause papers survive) eighteen are from the forty years 1660-1700 and twenty-five from the first half of the eighteenth-century.⁷³ Church court office prosecutions of infidelity and fornication in the sixteenth- and seventeenth-centuries have been used as indicators of levels of popular tolerance of extra-marital sexuality.⁷⁴ So the national decline of correction cases in the church courts might well indicate an increasing acceptance of sexuality outside of marriage. Yet continued disapproval can be identified in other channels. The campaign for the reformation of manners, from the 1690s, targeted adultery, fornication, profane swearing and cursing as well as various popular amusements.⁷⁵

⁷¹ *York Courant*, 4 February 1729, p. 2.

⁷² *Newcastle Chronicle*, 12 February 1791. By the 1770s the press was using the language of sensibility to describe adultery. So female infidelity was described as a 'Want of Delicacy'. Adulteresses were castigated for being dead to a sense of guilt, although alive to the sense of shame. For example, *Newcastle Chronicle*, 1 June 1771, p. 2; *ibid.* 8 June 1771, p. 4.

⁷³ This figure is ambiguous because of the poor survival of Durham cause papers from the later seventeenth-century.

⁷⁴ For two opposing views see G. R. Quaife, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England* (London, 1979) and Martin Ingram, *Church Courts, Sex And Marriage In England, 1570-1640* (Cambridge, 1987).

⁷⁵ G. J. Barker-Benfield, *The Culture of Sensibility. Sex and Society in Eighteenth Century Britain*, (Chicago and London, 1992), p. 56.

Adultery was particularly identified as a crime committed by the elite, but it is not clear how far notions about adultery were affected by status.⁷⁶ The concept that the higher ranks accepted adultery was certainly borne out in the Smiths' adultery separation. Their three maid servants were reluctant to be employed by the Smiths once they knew what was happening, fearing for their reputation. Yet the couple's gentry acquaintances seemed less shocked, and thought a wife should keep her mouth shut, or at least avoid witnesses when she opened it, and sit firmly in the house, in order not to lose her home and maintenance.⁷⁷ Most often, however, the occasional moral judgements passed on infidelity can be related to occupation rather than social rank. In 1687, a Nottingham rector acknowledged that he had heard rumours that Gervase Pigot and his wife were in an adulterous relationship, rather than a marriage. He was at pains to insist that he wished that they would part because this would do charity to their souls. He had confronted the couple with the gossip and believed their denial, 'otherwise he would not have beene so frequently and familiarly with them as he hath beene'.⁷⁸

Landlords, publicans and servants often expressed disapproval. These were all occupations that necessitated some degree of publicly acceptable character. In 1700 Richard Pape, who kept a public house at Newton, Wakefield, received John Wheatley and Dorothy Cunliffe as guests. On finding out the following day that Dorothy was married, Richard reported that he had told John 'what a Shame and Sin it was to lye with other men's wives and bid him gett one of his owne and live honestly'.⁷⁹ Servants often declared that they had left (or attempted to leave) service because of adultery in the household, primarily out of fear that their character would suffer.⁸⁰ Ann Morton was in

⁷⁶ It was intimated that the 'modish' were leading other social groups to ape their adulterous lifestyles in Anon., *Adultery A-la-Mode. An Epistle from Lady Traffick to Sir John* (London, 1746), p. 5. Also *The York Chronicle*, 2 June 1796, p. 2.

⁷⁷ DDR, *Smith c. Smith*, 1789.

⁷⁸ BI, Trans. C.P.1688/2, *Office c. Cowley als. Cowland als. Pigot*, 1688.

⁷⁹ Apparently unconvinced of female fidelity, John replied that he never would 'For if he did other men would kiss his wife as well as he had kis'd theirs' ['kiss' meaning carnal knowledge]. BI, *Cunliffe c. Cunliffe*, 1701.

⁸⁰ For example, DDR, *Smith c. Smith*, 1789, Ann Shanks's deposition.

service with Dorothea Wentworth following her separation, for about four and a half years. At first Dorothea had a good character, but Ann left her service when it was reported that she was too familiar with men. Not having an established reputation in an area also made people wary about whom they mixed with. George Johnson, a printer in York, spent time with his friend who was hired by Dorothea. At Dorothea's request, George showed her the printing process, after which she asked him to sup with her. Before doing so he heard a bad report and therefore asked to be excused, 'lest as he was a Stranger [in York] he might suffer in his own Character by being with her'.⁸¹

VI

Although the prosecutions of adulterers are too limited to provide evidence of how far attitudes towards sexuality outside of marriage were changing, they do give some insight, up to the mid eighteenth-century, into occasions when people instigated legal intervention.⁸² Straightforwardly, rumour in the neighbourhood could lead churchwardens to present an individual, often at a visitation, and twenty-one suits seem to have been founded upon public report. Overall, these numbers hardly indicate much concern in the localities to root out unfaithful spouses. Many adultery presentments centred on the birth of an illegitimate child. This could come to light when a single woman was persuaded to name the child's father during labour or through the attempt to hide a pregnancy. The range of evidence against Francis Duning in 1668 included the rumour of his liaison with his servant, Anne Knott, from 1660 to 1664, her naming a child upon him in labour in 1663, his maintaining the child, and finally, as the articles informed him, the child was 'resembling and being very like unto you'.⁸³

The prosecution of an individual for bearing a bastard child at the quarter sessions could lead in turn to a church court presentation. William Lambe attempted to keep the

⁸¹ BI, *Wentworth c Wentworth*, 1756

⁸² The origin of seven suits is unknown.

⁸³ BI, C.P. H/2843, *Office c. Duning*, 1668.

pregnancy of his servant private. He sent her to several houses during her pregnancy, but in her labour she owned that he was the child's father. She then gave a bond to the parish of Danbydale that the child would not be a burden, and William found someone to stand security on his behalf. Ann was summoned to attend the quarter sessions in January 1679/80 to be punished for bastard bearing. William appeared on her behalf and, it is alleged, tried so hard to get her acquitted that most of the people there took him to be the father.⁸⁴ For all the economic aspects of these cases, it is not wise to conclude that it was only this context that created public disapproval, since the giving of a bond that a child would not be chargeable to the parish was another event leading to ecclesiastical punishment.

An individual could also promote office cases against adulterers. Two adultery suits were promoted by a member of the family of the woman cited as having adultery with the defendant. Another three were by the husbands of the accused adulteresses. In 1675 Abraham Shawe promoted a cause against John Marsden, from Newsome, for adultery with Sara Shawe, Abraham's wife, during 1674 and 1675. Unfortunately, only the Libel and Personal Response survive, with John denying the adultery.⁸⁵ Similarly, in the late seventeenth century, a few husbands had their alleged wives' lover bound-over to appear before the quarter sessions to answer their objections.⁸⁶ It is not clear why a husband would promote an office case, rather than instigate a separation suit. Perhaps he wished to see the offending man publicly punished and humiliated, and his wife brought into line, while not seeking to live apart from her.

VII

One conspicuous feature of legal actions against adulterers and printed reports of adultery is the way that representations of the protagonists in an illicit love affair

⁸⁴ BI, C.P. H/4349, *Office c. Lambe*, 1680.

⁸⁵ BI, C.P. H/3237, *Office promoted by Shawe c. Marsden*, 1675.

⁸⁶ NYCRO QSB/1698, film 208, Bartholomew Foster's recognizance. Also NYCRO QSB/1699, film 353, John Hill's recognizance.

underwent transition.⁸⁷ Perhaps the most noticeable change was in the way female adulteresses were discussed. Until the 1730s, unfaithful wives in suits before the church courts were represented as indifferent about their sexual reputation and relatively brazen when confronted with their deeds.⁸⁸ Their lack of modesty was emphasised in Libels and/or through their depositions. The office cause against Mary Babb and her brother-in-law, Richard Babb, in the 1660s centred upon the 'uncivil' sexual act committed by Mary and Richard in a 'Beastly Manner'. After watching the couple intermittently through a hole in the wall for about fifteen minutes, Richard and Alice Vintin and another neighbour, Elizabeth Tullett, went next door to face the couple with their scandalous behaviour. They observed that Richard looked 'shameful' and was unable to speak 'he was so amazed'. Mary, on the other hand, nonchalantly said 'Lord Blesse me' and 'sett a bold face on it'.⁸⁹

In the only surviving adultery separation case of the later seventeenth-century, Edward Silvester of Barnsley sued his wife Anne, in 1675. Married in 1654, Anne had lived separately from her husband with Joseph Oakes. Hannah Addy, a neighbour of Anne reported that Anne swore bitterly that if there were a bed at Barnsley Cross, she and Joseph would lie together 'that all the world might see them', or even in a public bed in the house in which they lodged.⁹⁰ Morally lax behaviour crossed social ranks. In 1715 Lady Jane Vavasour was described as throwing herself across her lover, who was lying on the bed in an inn, and declaring when he pulled out his 'privy part' that she would hide all. This was in front of her cousin Lucy, her maid and the daughter of their landlord, who all ran out when Jane took hold of William's penis. Another deponent, a

⁸⁷ This is somewhat speculative since there are so few adultery separation suits spanning the 140 years. The problem is exacerbated by the absence of seventeenth-century adultery separations.

⁸⁸ For brazen adulteresses in the Court of Arches, see Foyster, *Manhood*, pp. 167-9.

⁸⁹ BI, C.P. H/2688; C.P. H/2807; C.P. H/2741, *Office c. Babb*, 1666. Interestingly a similar tone was used to describe Ellen Lambe, who was prosecuted for fornication with a married man. She allegedly declared that her relationship with him had nothing to do with anyone else. She was described as addicted to the company of lascivious young men. Even when caught with a different man astride her, one morning, she was unflustered, while he was ashamed and blushing. BI, C.P. H/4349, *Office c. Lambe & Hornby*, 1694.

⁹⁰ BI, *Silvester c. Silvester*, 1675.

farmer who ran errands for the Vavasours, took a letter to her at an inn. Lying on the bed with William, who rested his leg over her, she casually put out her arm and took the letter.⁹¹

Two adultery separation suits in 1748 and in 1761 presented dual images of the same wife; one flaunted her adultery, the other was chaste and modest. George Surtees' case against his wife, Elizabeth, initiated in 1745, depended solely upon the 'eye-witness' account of Margaret Crow, their maid. She deposed to having seen Elizabeth in the act of adultery with two separate men, on five different occasions. Elizabeth was consistently portrayed as uncaring in these acts, to the point of a perverse passivity. She obviously had the bad habit, with both lovers, of leaving her chamber door wide open when she entertained them. Margaret claimed that on going to clear the dishes from the yellow bed chamber, in July 1743, she found John Thompson 'with a Coffee Cup in his left hand and his Privy Member in his Right Hand, and naked (and erect to this Deponent's apprehension)'. On the other hand, Elizabeth and her deponents confirmed that she was virtuous, religious and of good character. Indeed, when Durham Consistory Court granted George his separation, Elizabeth successfully appealed to York.⁹²

It is not clear whether these cases were a transitional phase in the images of adulteresses or simply more highly defended cases. After the 1750s, however, wives were not presented in the same 'hard-faced' way as earlier. In five suits ranging from the 1750s to 1780s the wives were gossiped about in their communities and acknowledged to be of loose character, but they were not represented as brazen or lewd. Instead the deponents disapproved of specific behaviour, rather than presenting a generic image of an indifferent adulteress.⁹³ If anything, these wives were shown attempting to hide their

⁹¹ BI, *Vavasour c. Vavasour*, 1715.

⁹² BI, *Surtees c. Surtees*, 1745. Her defence attacked the credit of Margaret Crow claiming that she was bribed. Interestingly, thirteen years after the suit was begun, George bequeathed a cottage for Margaret to live in during her life-time and an annuity of £10. DPR, 1758 George Surtees. See also BI, *Manwaring c. Manwaring*, 1761.

⁹³ For example, BI, *Wentworth c. Wentworth*, 1756.

behaviour. Alice Chaworth was separated from her husband in 1758 and sued by him in 1760 for adultery with William Hepptenstall, a cordwainer in Newark. The statements of deponents focused on the almost pitiful extremes to which Alice tried to have time with her lover, while still keeping the intimacy a secret from her various maids with whom she shared a bed in her lodgings. Alice's letter to William, presented as an exhibit, pleaded with him to visit her in Retford; but emphasised that he must do so privately without any of the 'Newarkers' knowing.⁹⁴

By the 1780s wives were displayed expressing remorse and guilt, even by deponents who were hostile towards them. Henrietta Stapylton was described as crying to the point of being sick, when she was confronted with the news that her affair was discovered. One article of the Libel remarked that, while packing for Henrietta, prior to her leaving home after the discovery of her affair, a maid informed her that her gown was still at the mantua makers. Henrietta replied, 'well you may take it your self and remember every time you put it on what a vile wretch used to wear it'.⁹⁵ A suit, also brought in 1789, at Durham consistory court, reveals that Eleanor Smith confessed her adultery to her husband William. This was not simply a bland statement to confirm her ill-behaviour. The Libel reported that Eleanor's sister came to visit her on the day of her confession. Updated by William, she was astonished and troubled and went to talk to Eleanor. On entering a little later, William found both in tears.⁹⁶ Such an image of remorse was not common in suits from early in the century. Still, the shift is by no means clear cut, as there is some indication that female repentance alleviated disapproval in the later seventeenth-century. Daniel Ottie admitted turning his wife out because she was adulterous. He refused to accept her back because 'she has not as yett made any submission or declared any sorrow or pentenance [sic]' for her faults and continued to live a lewd life'.⁹⁷

⁹⁴ BI, *Chaworth c Chaworth*, 1760.

⁹⁵ BI, *Stapylton c. Stapylton*, 1786.

⁹⁶ DDR, *Smith c. Smith*, 1789.

⁹⁷ BI, *Ottie/Otley als. Awtie/Awtey c. Ottie/Otley als. Awtie/Awtey*, 1685

Some understanding for unfaithful wives was present throughout the eighteenth-century. In 1721 Sarah Kirkby, a midwife of Beverley, advised Elizabeth Dent, who was pregnant with her husband's brother's baby, to go to Daniel Tong's house in Misperton, a village in Nottinghamshire, to bear the child. She did this to help prevent Elizabeth being exposed to public shame.⁹⁸ But by the 1760s, deponents were displaying overt sympathy for the wives much more commonly than in early suits. When John Isaacson died unexpectedly, having just taken his wife back after her adultery, his colleague and friend Christopher Fawcett opined about Mary that, 'bad as her Conduct hath heretofore been she is now an Object of Compassion'. This was partly because she was honest, having handed over to Christopher upwards of £900, which Isaacson had with him at his death. But her character was also important, for Christopher said that if Mary continued in her pious resolution of penitence it would greatly hurt him and the other executor if they could not make provision for her.⁹⁹

There is even a hint that second chances were awarded. When Mary Whinham, a servant, in her early twenties, was hired in May 1788 by William and Eleanor Smith, she was initially unwilling to go into their service because of Eleanor's poor reputation. To this end, accompanied by her mother, Mary visited a neighbour of the Smiths where they enquired about the household. The neighbour replied that she thought Mary would do well there, for though Mrs Smith had behaved indifferently with John Hall, he was leaving and Eleanor would perhaps do better after he was gone.¹⁰⁰

Similar sentiments can be found in the press. In 1787 the Countess of Strathmore was embroiled in her very public separation from Andrew Robinson Bowes. During their suit at Doctors Commons, a manuscript, which she had written at his instigation in

⁹⁸ BI, *Dent c. Dent*, 1722.

⁹⁹ BI, *Isaacson c. Isaacson*, 1776.

¹⁰⁰ DDR, *Smith c. Smith*, 1789.

1778, was brought as evidence (and soon published). It listed the Countess's misdemeanours from before her marriage. *The York Herald* reported that a celebrated lawyer gave his opinion of the author, parodying Pope: 'If to her share some *female* errors fall, Think on her *candour*, and forgive 'em all!'¹⁰¹ Wives were even shown acting honourably.¹⁰² In another 'high-profile' case, the Marchioness of Abercorn was described as being of 'irreproachable' and 'meritorious' conduct. This was predominantly because she confessed to her husband that her feelings for another man were contrary to 'conjugal duty', prior to committing adultery. As a result those who knew her looked on her 'imprudence with pity and tenderness, rather than with the asperity of censure'.¹⁰³

By the later eighteenth-century, the blame for infidelity was less clear-cut than before. Elizabeth Foyster has shown that cuckolds in the seventeenth-century were despised and ridiculed as weak and ineffectual. Ballads and plays firmly placed the blame for a wife's incontinence upon the cuckold because he was not able to sexually satisfy his wife.¹⁰⁴ In the early modern period, a good sexual relationship between spouses was acknowledged to be a vital part of marriage; not only was it positive in itself, it helped prevent adultery.¹⁰⁵ It is feasible that some resonances of this were present, underlying the emphasis in adultery separations upon a husband's affection. John Taylor's Libel, in 1776, was typical in its declaration that he 'always behaved towards her [his wife Ann] with true conjugal love and affection and did all in his power to make her happy'.¹⁰⁶ In 1715, Anne Metcalfe deposed, on behalf of Sir Peter Vavasour, that he was tender and affectionate, as a loving husband ought to be.¹⁰⁷ Unfortunately it is difficult to tell how far 'affection' was used as a euphemism for sexual relations because sexuality was only

¹⁰¹ *Newcastle Chronicle*, 13 January 1787, p. 1.

¹⁰² For example, *York Chronicle*, 8 August 1793, p. 1.

¹⁰³ *York Herald*, 17 November 1798, p. 3.

¹⁰⁴ Foyster, *Manhood in Early Modern England. Honour, Sex and Marriage* (London and New York, 1999), pp. 66-72; idem. 'A Laughing Matter? Marital Discord and Gender Control in Seventeenth-Century England' *Rural History*, 4 (1993), pp. 8, 11.

¹⁰⁵ Patricia Crawford, 'Sexual Knowledge in England, 1500-1750' in Roy Porter and Mikulas Teich, *Sexual Knowledge, Sexual Science: The History of Attitudes to Sexuality* (Cambridge, 1994), p. 84.

¹⁰⁶ BI, *Taylor c. Taylor*, 1776.

¹⁰⁷ BI, *Vavasour c. Vavasour*, 1715.

ever considered as part of the adulterous relationship. Furthermore, the records were skewed in favour of the husband. It was largely his description of his wife's affair; so he was never described as a cuckold.

Nonetheless, it is clear that husbands were portrayed in separation suits as failing because they neglected their wives. As well as accusing John Dent of being adulterous with his maids, Elizabeth Dent showed that he neglected her, stating that when he lived in Beverley he spent all days and most nights at Samuel Dalton's house.¹⁰⁸ This still inferred that the husband's neglect included a sexual element. That was certainly the import of 'Lady Traffick', in a pamphlet published in 1746, who informed her husband:

If you the threaten'd dread Divorce pursue,
Think, from your own Neglect, 'tis but your Due:
When Vigour, ev'n in Youth, exhausted grows,
The Shallow Stream in *frigid Channels* flows;
The disappointed Wife in Secret pines,
and curses Matrimony many Times;¹⁰⁹

After the 1750s, husbandly neglect was a defence commonly used by defendants in criminal conversation actions, but also incorporated emotional aspects.¹¹⁰ In 1798 *The York Herald* reported that the Marchioness of Abercorn had long been 'prey to hopeless dejection, and mortified by neglect', when she turned to Captain Copley for affection.¹¹¹ *The Laws Respecting Women*, published in 1777, criticised the belief that adulteresses should not be allowed to marry their lover following divorce. After all, some 'modern breaches of chastity in women may be excited, by notorious, avowed, and long persisted in, acts of indifference and neglect in the husband'.¹¹²

By the end of the period, commentaries on the injured male party tended to offer pity rather than contempt and/or ridicule. As early as 1739, *The Gentleman's Magazine*

¹⁰⁸ BI, *Dent c. Dent*, 1722.

¹⁰⁹ Anon., *Adultery A-la-Mode* p. 12.

¹¹⁰ Also see Andrew, "Adultery a-la-Mode", p. 19; *Divorce*, p. 266.

¹¹¹ *York Herald*, 17 November 1798, p. 3.

¹¹² Anon., *The Laws Respecting Women, as they regard their natural rights, or their connections and conduct* (London, 1777), p. 93.

printed 'Mr Spectator's' response to a cuckold who requested consolation and advice. He conveyed his pity, but observed that 'it is too common a Case to affect the Generality of the World'. Indeed, it was so common that 'it ought to be esteem'd as nothing; for it brings no real Injury to a Man's Reputation or Fame, since it depends not on his Will or Consent'. He concluded that the correspondent was in the same society as kings, dukes, earls, bishops, and numerous other worthies.¹¹³ Echoing this sentiment, in 1788, the wife of Eleanor Smith's lover, referring to Reverend William Smith, remarked, 'Poor Man I pity the Priest, little does he know what sort of a Wife he has'.¹¹⁴

In tandem was the portrayal of husbands as honourable in their dealings with their adulterous wives. *The Newcastle Journal* admired Lord Grosvenor's generosity to his wife in 1772. He showed his kindness and 'rescue[d] her from insult' by stopping the proceedings of his separation suit against her in Doctors Commons, after she was deserted by her seducer and left unpitied and destitute.¹¹⁵ Other husbands were congratulated for magnanimously granting untrammelled access to children, against their sole right of custody. For this reason *The York Herald* celebrated the Marquis of Abercorn's '*liberality* as a man'.¹¹⁶

The move in representation was particularly noticeable in criminal conversation actions in which it was only the men involved who were handed the responsibility for the affair. Adulteresses were either described as being seduced by sexually aggressive men, or, if their husbands neglected them, were led by romantic folly into inappropriate relationships with lovers, who seemed to spend most of their time lying in wait for such unwary wives. Of course this passivity could be the result of the nature of criminal conversation trials, where wives were legally passive (although even the plaintiff and

¹¹³ *GM*, October 1739, vol. 9, pp. 530-1. The suggestion that sympathy for the cuckold was a new nineteenth-century phenomenon is incorrect. Foyster, *Manhood*, p. 216.

¹¹⁴ *DDR*, *Smith c. Smith*, 1789.

¹¹⁵ *Newcastle Journal*, 29 February-7 March 1772, p. 1.

¹¹⁶ *York Herald*, 17 November 1798, p. 3.

defendant were not called upon as witnesses). Thus they were represented in the suit by counsel for either side. As was the nature of the actions, two images of wives, husbands and lovers could be presented.¹¹⁷ In Susan Staves' words 'there was often a very specific contest of interpretation, the plaintiff's counsel trying to assimilate the facts to a tragic narrative and defendant's trying to force them into a comic one'.¹¹⁸ In 1791, the defendant's counsel in the criminal conversation trial between Mr Moresome, gentleman, and Mr Clarke, a magistrate for the county of York, charged Mr Moresome with negligence and inattention. Conversely, the plaintiff's counsel stated that the Moresomes were happy but that Mr Clarke had carried off, dishonoured and ruined Mrs Moresome.¹¹⁹

Indeed, by the mid eighteenth-century, the male lover was the object of unequivocal distaste. In 1761, Peter Wilkinson, a sixty-eight year-old yeoman, confronted John Read about a debt that he owed. John informed him that he was planning to claim to have had criminal conversation with Mary Manwaring, which would provide him with enough money [given by Mary's husband] to pay Peter. Peter responded that if John had been 'great with Mrs Manwaring you are a Rogue to tell it and if you have not you are a Damnable Rogue to say or swear so'. Peter's wife told John, 'Oh! Mr Read if you do such a thing I wou'd have you tied to a Post and pulled Limb from Limb by Women and I'll help to pull the first Limb'.¹²⁰ The notion of the artful seducer was, naturally, most promulgated in criminal conversation actions. In one 1794 case Lord Kenyon indignantly remarked that damages punished 'the Libertine who violates the Law of

¹¹⁷ In the debate about the 1800 bill, seducers were seen in two ways. One cast them as evil and dishonourable, the other saw them as honourable and misguidedly acting out of love. Andrew, "Adultery a-la-Mode", p. 21.

¹¹⁸ Susan Staves, 'Money for Honor: Damages for Criminal Conversation', *Studies in Eighteenth Century Culture*, 11 (1982), 282-3. An examination of parliamentary debate about adultery contends that both sides in the debate about the 1800 bill to restrict adultery perceived women to be swayed by impulse and passion. This was slightly different to earlier ideas about female sexual voraciousness, which was more active. The debaters envisaged women passively permitting themselves to be seduced. Andrew, "Adultery a-la-Mode", p. 21.

¹¹⁹ The jury awarded £3500 damages for the plaintiff. *Newcastle Chronicle*, 25 June 1791, p. 4. See also *Newcastle Advertiser*, 13 December 1800, p. 2. Debating societies in the 1780s often decided that the seducer was more to blame than the adulteress was. Andrew, "Adultery a-la-Mode", p. 13.

¹²⁰ BI, *Manwaring c Manwaring*, 1761.

God, of Social Duty, and Religion'.¹²¹ By the last quarter of the century, lovers were cast as manipulative seducers exploiting ties of friendship.¹²² A letter to the editor of *The York Chronicle* in 1773 told a tale of two male slaves in Maryland who were devoted friends. One slave was married and the other betrayed his friend by seducing his wife. Finding the two in a compromising position, the husband told his wife that he did not blame her, but that his bosom friend was a traitor. Soon after, the lover confessed his guilt, prevented the husband from committing suicide, convinced him to agree to be happy again with his wife, and then decently hanged himself in remorse.¹²³

¹²¹ *York Herald*, 1 March 1794, p. 3.

¹²² This was a feature of debates about adultery in the 1780s. Andrew, "Adultery a-la-Mode", p. 17. A rather eccentric hypothesis is that the 'new heterosexuality' of the eighteenth-century allowed men to have intense friendships. They would invite each other home and since the ideals of romance and domesticity were inculcating higher expectations in wives, some of these wives turned to their husband's friend for emotional and sexual satisfaction. R. Trumbach, *Sex and the Gender Revolution* (Chicago and London, 1998), pp. 12, 393-5.

¹²³ *York Chronicle*, 30 July 1773, p. 260.

CHAPTER SEVEN

'the Matrimonial Yoke':¹ the economics of marriage.

'Marriage frees a man from cares for when hee's wedd his wife takes
all upon her'.²

I

Exciting as they are, pivoting on those perennially interesting subjects of sex and violence, the primary complaints of adultery and cruelty made in legal actions only provide a partial view of the marital relationship. Their insights into the contested power balance in wedlock and the relatively un-gendered understandings of marriage and reputation are only comprehensible if situated within the household and domestic economy. This is best achieved by analysing the secondary marital grievances expressed in the ecclesiastical courts.³ The most striking thing about them is that they revolved around the economics of marriage. When all the issues relating to property disagreements, provision, extravagance and the conveying away of goods are added together, over 62% of the secondary complaints were about material resources or property ownership (see Table 10, p. 56). In this way they reconstruct the domestic economy with marriage at its centre.

II

Men took on various responsibilities at marriage, the most important being the provision and protection of their wives and families.⁴ It is clear that the nineteenth-century breadwinner had his antecedent in the male provider as far back as the later seventeenth-

¹ Advert placed by Charles Pearson, in which he claimed that he and Martha, his wife, had separated 'being tir'd of the Matrimonial Yoke'. *The York Courant*, 21 September 1756, p. 3.

² Perhaps testing his pen, and certainly under the influence of the causes that paraded before him, the clerk of the York Chancery Court scribbled this in the frontispiece of the act book for 1667-1670: B1, Chanc.AB. 29.

³ See chapter three, pp. 51-7.

⁴ The *Oxford English Dictionary* defines a provider as one who supplies, and provision as providing or supplying of necessities for a household. Although it is not specifically attributed to one sex only, most of the examples refer to men.

century.⁵ In fact, there were legal, cultural and social expectations that a husband contribute to the support of his wife. English wives' position under the common law's fiction of coverture removed their ability to contract in their own right, or to own or control their property or goods, without recourse to separate settlement. They were unable to make economic contracts or to purchase goods on credit in their own name. The token offered in return was their right to be maintained by their husbands and to use the law of agency.⁶ Theoretically, this financial commitment continued, in some instances, when a marriage collapsed. According to *The Laws Respecting Women*, if 'a woman cohabit with her husband, he is obliged to find her necessaries, as meat, drink, clothing, physic, [etc.] suitable to his rank and fortune. So if he runs away from her, or turns her away, or forces her by cruelty or ill-usage to go away from him.'⁷

The Poor Laws ensured that a deserted wife's support was first and foremost the responsibility of her husband. The parish only stood in until the husband could be tracked down and forced to take over.⁸ Men were prosecuted for failing to be responsible for their wife and family. A wife could bring a suit for alimony against her husband if he separated from her and refused to make her an allowance.⁹ Local authorities also prosecuted irresponsible husbands. The quarter sessions grand jury at Morpeth presented Robert Trumble, a maltster, in Easter 1715 because, along with his

⁵ The transition in the nineteenth-century seems mostly to have been in the use of the concept of the male breadwinner to exclude women from the labour market and as political rhetoric.

⁶ For the legal responsibilities that men took on when they married see Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Oxford, 1983), pp. 26-7, 30-1; O. R. McGregor, Louis Blom-Cooper, and Colin Gibson, *Separated Spouses: A study of the matrimonial jurisdiction of magistrates' courts* (London, 1970), p. 6.

⁷ Anon., *The Laws Respecting Women, as they regard their natural rights, or their connections and conduct* (London, 1777), p. 66.

⁸ Holcombe argues that, before 1834, the poor law did not recognise a husband's liability to support his wife. Thereafter relief was given on the understanding that it was a loan to be recovered from the husband. *Wives and Property*, pp. 30-1. In contrast, the eighteenth-century poor law material in quarter sessions order books for the three northern counties shows that deserted wives would be maintained and their husband's profits, goods etc. would be confiscated to reimburse the parish.

⁹ The court would then assign maintenance and compel the husband to pay it by ecclesiastical censures. J. E. Hovenden, *Commentaries on The Laws of England by Sir William Blackstone*, vol. 3, 19th edn (London, 1836), p. 94.

reckless violence and threats, he had reduced his family to beggary and 'will neither work himself nor suffer his wife to work to get a maintenance for the famelly'.¹⁰

The middling-sort and poorer people saw male provision as the key element of being a husband. For women, a husband's economic potential was crucial to a successful marriage. It was probably one factor in choosing a marriage partner. Jane Allison chatted to a friend in the 1760s that 'she woud never Marry a Husband without having one to Keep her', despite her own successful trade as a mantua maker.¹¹ For some women, the failure of a husband to be economically proficient dissolved a marriage.¹² In 1711, Arthur Sayer of York attempted to make his wife, Margaret, return to him. As well as alleging some specific acts of physical abuse in defence, Margaret explained that Arthur used falsities to get her to marry him. In order to assure her that his business as a joiner would support him and his family, he had borrowed neighbours' goods to furnish his house before showing it to her. Margaret, a widow, who described herself as able to live very well and credibly through her own business of selling ale, found that in fact he was very poor and unable to provide sustenance for his family. As a result she 'humbly conceived she had lawful cause to absent herself from her husband'.¹³

This concept informed a frequent complaint made by unhappy wives. Female plaintiffs in over 38% of the separation and restitution of conjugal rights suits alleged that their husband failed to maintain them; a consistent claim over the period (see Table 10, p. 56). Breaking the conjugal vows by failure to provide was a fault of the husband; thus it is less an aspect of adultery separations, which established the faults of the wife. When

¹⁰ NRO QSB/42, fol. 1.

¹¹ DDR, *Allison c. Allison*, 1765.

¹² Fascinatingly, a couple of eighteenth-century law books aimed at women mention a divorce *causa saevitae sive Metus*, additional to the usual divorce *a vinculo* and divorce *a thoro et mensa*. Its grounds was a husband taking necessities from his wife, as well as one or other spouse fearing poisoning. I did not find it mentioned elsewhere. *Baron and Feme. A Treatise of Law and Equity, concerning husbands and wives*, 3rd edn (London, 1738), p. 433; Anon., *The Laws Respecting Women, as they regard their natural rights, or their connections and conduct* (London, 1777), p. 96.

¹³ BI, *Sayer c. Sayer*, 1711. CP.I/187, Response of Margaret Sayer to Libel.

mentioned, it was to emphasise that the wife had no reason to leave her husband. So to highlight her fault in abandoning him for an army lieutenant, Hooker Barttelot outlined his ability to provide for his wife in a manner suitable to his situation as a naval captain and substantial landowner, in 1793.¹⁴ Complaints made by battered wives to justices of the peace consistently combined their husbands' violence with their refusal to provide.¹⁵

Some wives simply stated that their husbands refused to provide for them, others specified in detail that they were forbidden common necessities, clothes, or money to buy them. John Halleley, of Sherburn in Elmet, threatened to lock up his wife in 1707, 'soe that shee should live upon crusts and hard meate, such as hee would please to give her, which should be very small'. He said he would see her at the Devil, spend his whole estate, and even kill himself before she should have maintenance from him.¹⁶ In 1713, Thomas Stradling deserted his wife and forced her and her children to eat a 'mean and poor dyett not fitt for Christians especially such as herself and Children', while ordering good meat for himself.¹⁷

Not all the claims had overtones of a power struggle. Husbands failed to provide by neglect as well as aggression. Sued for restitution in 1673, Jane Currer explained her refusal to return to her husband. Henry was cruel to her, had locked her in a room with very little meat or drink, and often went to Scotland for several months in which time he left Jane without support.¹⁸ The concept had wide parameters. Some men provided for their mistresses instead of their wives, and one wife was not provided with a house or maintenance suitable to her rank. Wives also complained about their husbands' failure to fulfil their obligations during the lying-in period. Margaret Story's depressing tale of her

¹⁴ BI, *Barttelot c. Barttelot*, 1793.

¹⁵ For example NYCRO QSB/1740, film 132, John Bell's recognizance; DRO Q/S/OB/6, 14 January 1680, Elizabeth Hilton; NRO QSB 39, Mary Appleby's deposition, 24 December 1713, fol. 76.

¹⁶ BI, *Halleley c. Halleley*, 1707.

¹⁷ BI, *Stradling c. Stradling*, 1713.

¹⁸ BI, *Currer c. Currer*, 1673.

abuse at the hands of her husband included his failure to allow her a full lying-in month.¹⁹

Another category of complaint that was implicitly about the allocation of material resources was male drunkenness, alleged in nearly 12% of separation and restitution suits, and in a quarter of the cruelty causes alone (see Table 10, p. 56). Drunkards wasted the household money and failed to provide for their family.²⁰ This annoyed the local community. In 1711, Francis Robinson was placed in York gaol, upon the charge of several people in his neighbourhood, for failing to find sureties for his good behaviour, for being a litigious and troublesome person, and, instead of labouring towards the maintenance of his wife, attempting to impoverish her and his children by drink.²¹ The association of intoxication with the failure to maintain, wastefulness and violence was fundamental to Margaret Story's grievances made to the quarter sessions. Each depiction of an episode of cruelty was preceded by an outline of a drinking bout; all were connected with lack of provision. Turned out of their house in Morpeth by his 'evill usage', she had to seek lodgings for three weeks, while he drank in alehouses. On other occasions Robert and his brother went drinking for several days, leaving her and her child starving at home. To facilitate this, he locked away supplies, hid victuals from his family in the fields, and left no money for Margaret to buy food.²² With such claims,

¹⁹ NRO QSB/5, fol. 14. While still lying-in after the birth of their child, Robert attacked her because she would not go out and borrow £6 from her brother. For the needs husbands were supposed to meet during childbirth, see Linda Pollock, 'Embarking on a Rough Passage' and Adrian Wilson, 'The Ceremony of Childbirth and its interpretation' in V. Fildes (ed.), *Women as Mothers in Pre-Industrial England* (London, 1990), pp. 52-3, 70, 76-8.

²⁰ Temperance in the second half of the nineteenth-century was partly a religious expression of the fight between husbands and wives over the proportion of household income to be allocated to either male leisure pursuits or female budgets for food and rent. Pamela Walker, "'I live but not yet I for Christ Liveth in Me', Men and masculinity in the Salvation Army, 1865-90" in Michael Roper and John Tosh (eds.), *Manful Assertions: Masculinities in Britain since 1800* (London, 1991), pp. 101-4.

²¹ NYCRO QSB/1711, film 138. Drunkenness was sometimes associated with rising poor relief, because it was argued that the poor wasted their money on drinking instead of subsistence. Peter Clark, *The English Alehouse. A Social History, 1200-1830* (London, 1983), p. 167.

²² Too ill to come and make oath at Morpeth court of quarter sessions in 1688, she sent an information asserted to be true by five petitioners, of whom one was the vicar of Bedlington and another two its constables. NRO QSB 5, fols. 14-15. See also, NYCRO DC/RMB III 3/1/3, Thomas Hogg's mother-in-law's information, August 1784, films 002204, 002220, 002227.

defendants were immediately morphed into failing husbands who would be widely recognised.²³

Provision for the family was part of male self-identity. In *The History of Myddle*, Richard Gough categorised married men and women by their success or failure to live-up to his firmly held conceptions of how they should behave. For men this meant the ability to keep the household fed and to be hard working.²⁴ Men were consistently informed about their obligations. In 1714 William Fleetwood advised husbands that part of the love they owed to their wives was 'in taking care *of* and making all due Provision for them.'²⁵ *The Newcastle Chronicle* printed the duties of the good husband in 1765, explaining that 'all his care and industry are employed for her [his wife's] welfare; all his strength and power are exerted for her support and protection'.²⁶ A 'poetical essay' in *The Gentleman's Magazine* of 1733, entitled 'Woman's Hard Fate', bemoaned female subjection first to a father, then a brother and finally a husband, naming the latter as a sovereign, and describing marriage as a 'fatal bondage'. A 'Gentleman' responded to this, by arguing that men simply guarded women, who had the better deal in the conjugal bargain because: 'Tis *man's*, to labour, toil and sweat,/And all his care employ,/Honour, or wealth, or pow'r to get;/'Tis *woman's* to enjoy.'²⁷

Married men undeniably understood their obligation; after all, they promised to endow their wives with all their worldly goods in the wedding ceremony. Michael Mascuch's review of early modern autobiographers illustrates that many men thought hard about

²³ In ballads, husbands were seen as bread-winners and wives as managers of the household and participants in domestic industry. J. Sharpe, 'Plebeian Marriage in Stuart England: Some Evidence from Popular Literature', *Transactions of the Royal Historical Society*, Fifth Series, 36 (1986) 75-7.

²⁴ Cited in Anthony Fletcher, *Gender, Sex & Subordination 1500-1800* (London, 1995), p. 268. This was a protective role. Men were expected to fight for their family's survival as much as women. A hand bill that was circulated in a time of rioting in Birmingham in 1795 incited, 'To arms, fellow Townsmen! ... save your famishing families from destruction!'. John Bohstedt, 'Gender, household and community politics: women in English riots 1790-1810', *Past and Present*, 120 (1988), 93.

²⁵ William Fleetwood, *The relative duties of parents and children, husbands and wives, masters and servants; consider'd in sixteen practical discourses with sermons upon the case of self-murther*, 2nd edn (London, 1716), pp. 236, 260-2.

²⁶ *The Newcastle Chronicle*, 31 August 1765, p. 1.

²⁷ *GM*, vol. 3, July 1733, p. 371.

whether they could afford to maintain a family before entering marriage. Thomas Gent a printer of York recalled, 'I was not very forward in my love, or desire of matrimony, till I knew the world better, and, consequently, more able to provide ... a handsome maintenance'.²⁸ Early in his marriage Ralph Josselin ruminated: 'a man is bound to provide for his family, and lay up for them, this Scripture alloweth, commendeth, requireth'.²⁹ Not surprisingly, some men rejected the standard. In one matrimonial case it was alleged that marital cruelty had taken place simply so that the husband could escape the burden of providing for his wife. In 1682, Samuel Clyatt, of Gray's Inn, the brother of Martha Brooke who was seeking separation from her husband on the grounds of his cruelty, told how Timothy Brooke came to him in London, and requested him to write a letter to Martha ordering her to leave his house. If she were there on his return, he warned her that he would cut her throat. Samuel wrote the letter and in his opinion, Timothy's demand was 'craftilie made on purpose to gett ridd of his wife and to ease himselfe of the charge of maintaineing of her'.³⁰

The necessity of male provision to middling-sort and poorer households is underscored by battered women's use of the courts. Often twofold, their aims were to alleviate physical abuse and safeguard their husbands' economic input to the household. In 1740 Elizabeth Bell, of Heworth in the county of Yorkshire, gave an information on oath requesting that her husband provide sureties to keep the peace towards her. John was a brickmaker who beat and abused her in 'an immoderate and inhuman maner [sic]', and promised to kill and sacrifice her, leaving her in 'perpetual fear' of hurt or death. He also threatened to run away and leave her and her children chargeable. Yet what she requested was that he provide sureties 'for his keeping the Peace and being of mild

²⁸ Mascuch, 'Social mobility and middling-sort self-identity: the ethos of British autobiographers, 1600-1750', *Social History*, 20, 1 (1995), 56-7.

²⁹ Cited in Mascuch, 'Social mobility', p. 58.

³⁰ BI, *Brooke c. Brooke*, 1683.

behaviour towards her and that he will continue with and assist in the Provision for and maintenance of her ... and their said children'.³¹

Battered wives rarely took prosecutions as far as they could go. Most women who went to justices out of session took their complaint no further than mediation or the issue of a warrant. It could be argued that cost of prosecution influenced this because such cautionary methods were the cheapest means by which a wife could try to halt her husband's abuse. Quarter sessions costs may have been prohibitive for poorer prosecutors, particularly when the costs of travelling to sessions are included.³² Theoretically, however, a married woman did not pay all of the prosecution herself. A plaintiff only paid for the warrant. Defendants paid the clerk for the recognizance, meaning that they paid the majority of the legal fees.³³ Maeve Doggett also shows that a woman could pledge her husband's credit for the cost of exhibiting articles of the peace against him.³⁴ More important was the harsh economic fact that most pre-industrial households needed two incomes to survive. The structure of the domestic economy was such that even if a wife did not pay for prosecution after a warrant, the cost of proceedings remained a disincentive because it would impact upon the household's total income.³⁵ Within the limitations of the legal assistance offered to battered wives, it is plausible that they chose methods of prosecution that provided them with protection, while impacting least upon the domestic economy.

³¹ NYCRO QSB/1741, information, 30 August 1740, MIC 133.

³² Nonetheless, a significant number of labourers brought cases at the quarter sessions. J. M. Beattie, *Crime and the Courts 1660-1800* (Princeton, 1986), pp. 41-7.

³³ Robert Shoemaker, *Prosecution and Punishment, Petty crime and the law in London and rural Middlesex, c. 1660-1725* (Cambridge, 1991), p. 117.

³⁴ It is possible that an indictment was not classed as a necessary, to be paid for by the husband. A case from 1836 specified that this criminal prosecution had to be paid by the women themselves. It is not clear how long this situation had been in action. Maeve Doggett, *Marriage, Wife-Beating and the Law in Victorian England* (London, 1992), pp. 30-1.

³⁵ Women who must have already feared physical repercussions from their husbands for making a formal complaint might have been less than eager to make them pay for costs.

Battered women who used the church courts, despite their apparent differences in social status to those using the quarter sessions, were also motivated by the need to stop further cruelty and safeguard their future financial support. Despite the fact that the ecclesiastical courts offered such women the chance to be rid of their frightening lifestyle and to gain alimony and the right to use the law of agency, few proceeded to sentence. Less than one-quarter of the forty-seven separations on the grounds of cruelty reached a sentence. Only four wives achieved a sentence in their favour and seven male defendants succeeded in having their wives' request for separation denied. The other causes were abandoned or agreed.³⁶ Again, the cost of taking the suit to its conclusion must have inhibited parties from going as far as sentence. Initiating a suit at the ecclesiastical court was not particularly expensive or difficult, but each step thereafter accumulated costs. One of the cheapest cruelty separations took a year, from July 1745 to July 1746, and cost £4 4s. 0d. In general costs were much higher.³⁷ It was possible to be admitted *in forma pauperis* when suing a cause, if the plaintiff or defendant were worth less than £5. But this right was rarely claimed in matrimonial causes and there were only two such claims made to York's ecclesiastical courts.

Importantly, initiating a suit allowed some women to come to terms with their husbands without having to go as far as the costly end-result. In a few defensive allegations against female plaintiffs it was suggested that their sole motivation was financial. Elizabeth Laughton was alleged to have expressed her desire to leave her husband, but 'was so well acquainted with the Law that she knew th[a]t if she left her husband she could not have a separate maintenance'. Instead she planned to provoke him to turn her

³⁶ Most causes have no final statement entered and simply tail-off. A minority may have been resolved in recess and not recorded thereafter. On a couple of occasions the sentence seems to have gone in the plaintiff's favour, but the case is not recorded as resolved because the defendant would not pay. Several men simply did not respond to Libels and a number were excommunicated as a result of contumacy or not paying costs or alimony. Some cases were ended with 'peace', 'stand' or 'agreed'.

³⁷ In adultery causes, which were less defended, costs for the one or two terms that such suits could take ranged between £8 5s. 8d. in 1722 and £9 5s. 9d. in 1701. More complicated suits reached costs of at least £75. A basic restitution suit of 1685 cost £2 13s. 4d., while an eighteen month suit from 1776 to 1778 that incurred outside legal advice cost £74 5s. 7d. Defended cases could be astronomically expensive. The Ettrick cause (appealed to York in July 1767) reached a staggering £355 before it was appealed to the Court of Delegates early in 1768. BI, *Ettrick* c. *Ettrick*, 1765.

away. When Timothy Hawsworth attempted to get her to return to her husband, she refused observing that 'the Law must make an End betwixt them.'³⁸ These claims were intended to discredit Elizabeth, but they overlay much truth. Women needed to safeguard their financial status as well as halt their husbands' abuse. Jane Allison's private letter to her proctor in November 1765 advised him that she 'intend[ed] to persist in the suit till he [her husband] either allow me more or take me home the ... latter I dont want to come to pass'.³⁹

III

According to the complaints about male provision and responsibility, or to be precise the lack of it, husbands were economically pre-eminent in the late seventeenth- and eighteenth-century household. In terms of common law and wage earning this was the case. It is also suggested by the way men employed advertising to prevent their wives from using the law of agency. Northern wives rarely used this medium for addressing marital problems. They sometimes replied in advertisements, but of the 214 newspaper adverts sampled, only one was initiated by a wife.⁴⁰ Although relatively costly, adverts were used by women, such as, those advertising their services. But where refusing credit was concerned, it was the economically dominant member of a partnership who gained, whether husband or business owner. So, women running a business would use the format. Ann Salmon, of Scarborough, for instance, warned merchants and traders not to give credit to her son-in-law, as she would not pay for any goods contracted in her name.⁴¹

For all this, there was a glaring paradox at the heart of these newspaper advertisements. Couched in terms of male economic superiority and female economic disability, in fact

³⁸ BI, *Laughton c. Laughton*, 1721.

³⁹ DDR, *Allison c. Allison*, 1765. Letters received by Peter Bowlby from Jane.

⁴⁰ It is important to recognise that women who advertised in response may have done much to puncture male reputation. After all, they tended to highlight the area in which middling-sort married men were judged, that is their economic protection and care of their family.

⁴¹ *The York Chronicle*, 23 September 1785, p. 3.

they demonstrate that wives held an equally vital role in consumption and expenditure. Why else would women's economic role have to be so carefully controlled in a difficult marriage? Simply put, all the records of marital conflict point to a remarkable degree of economic inter-dependence between spouses. Pertinently, not all men simply sought to cut loose the financial deadweight of a wife. The 20% of men who placed advertisements about their wives without referring to an elopement or separation were probably prepared to remain with them, as long as they could restrain their dangerous behaviour.

In addition, over 15% of the advertising husbands offered to take back their eloped wives. George Roper, a wright of Lanchester notified the public in 1771 that his wife had eloped without provocation, and ill-treated him in ways he did not wish to reveal. But, 'He will put up with all the ill Treatment he has received by her, if she will return again, and be kindly received by her said Husband'. If not, he refused to pay her debts.⁴² Such husbands stressed that their wives would be kindly, affectionately, or humanely received, and occasionally that their former faults would be forgiven.⁴³ This was even offered after an absence of several years. John Coxon of Bishop Wearmouth, a gentleman, informed his wife that he would take her back when he discovered she had returned to the area, despite the fact that she had left him ten years earlier.⁴⁴ Most men attached conditions, however, such as their wives must return by a certain date or return to their duty, or behave as became a wife.⁴⁵

Having the legal upper hand, husbands often threatened to use the power of law in their attempt to ensure that their wives returned. The law of consortium enabled a husband to

⁴² *Newcastle Chronicle*, 30 March 1771, p. 3.

⁴³ For instance see: *The Newcastle Courant*, 24 September 1763, p. 3; *idem.* 14 February 1767, p. 3; *The Newcastle Journal*, 31 January - 7 February 1756, p. 3; *York Chronicle*, 29 June 1781, p. 3; *The York Courant*, 3 February 1756, p. 1.

⁴⁴ *Newcastle Courant*, 20 August 1763, p. 3.

⁴⁵ See, *Newcastle Chronicle*, 30 April 1763, p. 3; *Newcastle Courant*, 14-21 September 1751, p. 3.

make a claim for the loss of his wife's society and services.⁴⁶ It signifies the oppressive nature of marital relationships to which law and economics could give licence. For, against its intended use, some husbands used it purely for malicious ends. They prevented their wives from living in the marital home while using the law to prevent them living anywhere else. In 1719, Anne Tomlinson, of Knarsdale, informed the justice of the peace that she had married Robert Tomlinson, a weaver, about three years before. A widow, she brought with her thirteen head of beasts, £3 10s. a year dower, and household goods of the value of £20. Soon after he married her, he disposed of her goods and cattle, and all her personal estate; finally turning her out of doors with the vow that he would starve her. She being 'willing and able to work for her living' went to work for the parson of Knarsdale. But he had to let her go as Robert brought an action against him for entertaining her. Anne declared she was destitute because Robert threatened to sue any person that entertained her.⁴⁷ The use of the law was not restricted to threats. John Ward, a yeoman, was prosecuted by John Moone of Newton Mulgrave, Yorkshire, for entertaining, keeping and lodging Margaret Moone and 'thereby createing and fomenting Differences' between the Moones.⁴⁸

Significantly, these male actions also reveal that husbands needed their wives to remain within the household. For, fundamentally, the law was a tool to blackmail a wife to return, since, if carried out, it could prevent her from earning her own living or finding a place to live. Twenty-three of the advertising husbands threatened to invoke this law of harbouring, as they called it. John Sander of Unthank of Kirkoswald (Cumberland) advertised in 1756 that his wife had left him without reason. He warned no one to supply her or harbour her, so 'that she may thereby be oblig'd to return to her said

⁴⁶ P. S. James with D. J. L. Brown, *General Principles of the Law of Torts* (London, 1978), pp. 333-4.

⁴⁷ NRO QSB 50, fols. 57; 79. See also NYCRO QSB/1750, Isabel Warwick's examination, 12 March 1749, MIC 136. Dorothy Cunliffe claimed that after her husband turned her out, he threatened the houses where she was staying with suits for harbouring her. As a result she was reduced to poverty and distress. BI, *Cunliffe c. Cunliffe*, 1701.

⁴⁸ NYCRO QSB/1708, film 158.

Husband'.⁴⁹ Sometimes the law's use had an emotional motivation. In the adverts the threat to invoke the law of consortium was often used against women who had taken their children with them.⁵⁰ Plainly such men wanted to ensure the return of their children.

IV

Without their wives, husbands lost several other vital components of their lives. Married women were delegated the responsibility to handle the day-to-day running of the domestic economy. This had two elements. As the newspaper advertisements reveal, married women managed most consumption and expenditure.⁵¹ The fact that male fears of financial ruin often pivoted on female extravagancy provides yet more proof that wives managed household finances. John Winks, the master of a brigantine, of North Shields, cautioned in January 1791 that his wife, 'by her wasteful and extravagant conduct, [had] so impaired my circumstances, as to oblige me to decline house-keeping'. Just to make sure no-one could ascribe her behaviour to his parsimony he asserted that he had provided sufficient lodgings, board, washing, clothes and apparel for her, as proper and competent.⁵²

Female economic inadequacy was a common complaint. The forty-three men who simply announced that they would not pay the debts of their wives indicated that they were unhappy with their financial abilities (see Table 6, p. 39). In 16% of the separation and restitution suits husbands alleged that their wife had run them into debt, using the terms 'extravagance', 'ill-management', 'mismanagement' or 'embezzlement' (see Table 10, p. 56).⁵³ Roger Manwaring, Esquire, moaned in 1761 that his wife had run him into

⁴⁹ *Newcastle Journal*, 4-11 September 1756, p. 3.

⁵⁰ *Newcastle Chronicle*, 8 October 1768, p. 3; also *ibid*, 18 November 1796, p. 3. Throughout the period men had sole legal right of custody over their children in the event of separation.

⁵¹ The use of the law of agency enabled wives to bypass the rules of coverture and participate in consumption largely at their own discretion. See Chapter two, p. 38.

⁵² *Newcastle Courant*, 22 January 1791, p. 1.

⁵³ For example, BI, *Idelle* c. *Idelle*, 1706; BI, *Shaw* c. *Shaw*, 1696.

debt since they had separated, listing the payments he had to make for her clothes, watch, lockets, buckles, smelling bottles and furniture. Furthermore, his inheritance of 1753 had been spent upon paying her debts.⁵⁴ Men often went to great lengths to spell out that they were literally endangered by their wives' behaviour. Thomas Wood, of Whitburn, appealed against a decision that he pay alimony to his wife Jane, who had sued him for restitution in 1708, because she had 'soe undutifully and disrespectfully behave[d] her selfe towards him and run him into such incumbrances by reason of her extravagancy th[a]t he was severall times sued and arrested for debt by her contracted.'⁵⁵ Similarly, Henry Hendry's petition to the bench at Alnwick sessions, in 1730, in response to his wife's accusations of barbaric cruelty, claimed that he was carried to Newcastle gaol until relieved by neighbours because of her accumulation of debts.⁵⁶

A number of husbands linked their wives' extravagance with their potential or actual bankruptcy. For example, Marmaduke Collinson concluded his warning to creditors that he would not pay his wife's debts, in 1753, by declaring that his public house in the city of York was now to be let and its furniture sold.⁵⁷ William Sampson a tallow-chandler and soap boiler of York claimed that his wife 'seems entirely bent to ruin' him, in 1756.⁵⁸ The first advert of Charles Pearson, a York tailor, was followed by another notifying creditors of his bankruptcy.⁵⁹ Ebenezer Robson was married in July 1683 when he was a tailor with a good trade, employing ten or more journeymen and apprentices, and lived plentifully and 'was well before hand in ye world'. But Anne Robson's negligence wasted his fortune and ran him into debt after seven years, so that his credit and trade were lost.⁶⁰

⁵⁴ BI, *Manwaring* c. *Manwaring*, 1761.

⁵⁵ BI, *Wood* c. *Wood*, 1708.

⁵⁶ NRO QSB 75 fols. 20-23.

⁵⁷ *York Courant*, 24 April 1753, p. 1.

⁵⁸ *York Courant*, 3 February 1756, p. 1.

⁵⁹ *York Courant*, 21 September, p. 3; 30 November, p. 3; 31 December, p. 4; 1756.

⁶⁰ He was forced to make application to the Right Worshipful Bench at Hull which awarded him a small subsistence, and later gave him the post of under mace-bearer to the mayor, at £8 per annum. BI, *Robson* c. *Robson*, 1700.

When discrediting their wives in this way, men were borrowing from a rich library of cultural clichés about extravagant wives who were frequently identified as the catalyst in ruining a household. Daniel Defoe quipped, 'I know 'tis a common cry that is rais'd against the woman, when her husband miscarries, namely, that 'tis the wife has ruin'd him'.⁶¹ When *The Gentleman's Magazine* printed didactic lessons in the 1730s about the perils of excessive consumption, the spendthrift wife took a starring role.⁶² Nearly forty years later, *The Newcastle Courant*, reported, in 1767, that among amendments to be made to the marriage act there was to be one whereby husbands would be authorised to prohibit their wives from contracting debts without their knowledge or consent, by entering the prohibition into a public register for searching by interested parties. The author commented that without this law, 'many industrious Tradesmen are ruined, from the Extravagance of the Wife'.⁶³ Advice for wives trod the same route. Thomas Gisborne warned the female sex against 'ostentation and prodigality'.⁶⁴ *The Newcastle Journal* printed the 'Rules and Maxims for promoting Matrimonial Happiness' in 1760. One section asked: 'Have you any concern for your own ease, or for your husband's esteem? Then have a due regard to his income and circumstances in all your expences and desires; for if necessity should follow, you run the greatest hazard of being deprived of both'.⁶⁵

⁶¹ Daniel Defoe *The Complete English Tradesman*, (2 vols., London, 1727), vol. 1, p. 132.

⁶² For example, *GM*, vol. 2, 1732, p. 753; vol. 3, 1733, p. 645; vol. 4, 1734, pp. 130-1.

⁶³ *Newcastle Courant*, 3 January 1767, p. 2.

⁶⁴ Thomas Gisborne, *An Enquiry into the Duties of the Female Sex*, 9th edn (London, 1796), p. 152.

⁶⁵ *Newcastle Journal*, 16-23 August 1760, p. 2.

In addition to managing expenditure and consumption, wives organised the household. In popular understanding, married women were housewives. According to *The Gentleman's Magazine* this was not simply a function, but 'a Female Virtue, call'd Housewifery'.⁶⁶ Hannah Woolley pointed out: 'To govern an House is an excellent and profitable employment; there is nothing more beautiful than an Houshold [sic] well and peaceably governed'.⁶⁷ The Marquis of Halifax informed his married female reader that her duty was: 'the Government of your House, Family, and Children'.⁶⁸ Little had changed by the end of the eighteenth century when Thomas Gisborne propounded:

[t]o superintend the various branches of domestic management, or, as St Paul briefly and emphatically expresses the same office, "to guide the house" is the indispensable duty of a married woman. ... The task must be executed either by the master or the mistress of the house: and reason and scripture concur in assigning it unequivocally to the latter.⁶⁹

In practice the tasks involved in housekeeping were many and varied depending upon rank, life-cycle and urban or rural lifestyle. Wives either managed or carried out the organisation of the household's contents, cleaning, cooking, preserving, washing, providing water and heating, producing clothes and household goods, making and dispensing medicine, providing hospitality, and consumption. Many combined the tasks with motherhood.⁷⁰

⁶⁶ *GM*, April 1734, vol. 4, p. 202. Christopher Flint proposes that, by the 1770s, the role was newly defined as a quasi-profession, providing women with a public role in the state. This was due to the belief that women should 'be mobilized to correct sexual and civil licentiousness, principally through their powers of household management.' He points out that this simply rationalised earlier behavioural norms. Flint, *Family Fictions, Narrative and Domestic Relations in Britain, 1688-1798* (California, 1998), pp. 65-6.

⁶⁷ Hannah Woolley, *The Gentlewomans Companion; or, a Guide to the Female Sex: containing directions of behaviour, in all places, companies, relations, and conditions from their childhood down to old age* (London, 1675), p. 108.

⁶⁸ Halifax, *The Lady's New Year Gift: or, Advice to a Daughter* (1688) cited in V. Jones, *Women in the Eighteenth Century, Constructions of Femininity* (London, 1990), p. 21.

⁶⁹ Gisborne, *Duties of the Female Sex*, pp. 148-9.

⁷⁰ See Christina Hole, *The English Housewife in the Seventeenth Century* (London, 1953); Caroline Davidson, *A woman's work is never done, A history of housework in the British Isles 1650-1950* (London, 1982); Amanda Jane Vickery, *The Gentleman's Daughter: Women's Lives in Georgian England* (London, 1998), chapter 4.

Ironically, one powerful reminder of wives' importance as housekeepers arises from husbands' frequent accusations that their wives threatened to poison them. Basically, women were associated with poisoning because they organised and prepared food and drink. While impotent, such threats are fascinating because they were calculated to infuriate a husband, since they were rooted in the area where women had most direct power.⁷¹ Laura Gowing argues that female poisoning, unlike male violence, 'had nothing to do with the establishment, or abuse, of hierarchical household power'.⁷² Yet it did indeed involve power, simply female rather than male.⁷³ It was a profound exploitation of their role as carer. James Currie was undeniably frightened of his wife because he thought she was trying to poison him when he was debilitated by illness. James's farrier was with him at Christmas, 1728, when Jane brought her husband a possett. James ate a little and then put his finger to his lips 'and bringing something upon the End of his Finger said Here is a Spider, I am ruin'd I am poisoned'. Although the farrier persuaded him this was fanciful, he vomited later, after eating a little more.⁷⁴

For middling sort and poorer women, household management was a primary role, even if they worked for wages as well. A domestic double-standard operated. A rare personal insight is afforded by Mary Collier's poem, in 1739. This catalogues long hours of monotonous female work outside the home for wages, at harvest and charring, and when completed:

⁷¹ Cases of poisoning emphasise how frighteningly easy it was for a wife to abuse her role. For example, Elizabeth Chester accused of attempting to poison Francis Chester, 1693. NYCRO QSB/1693, films 262-3; QSB/1694, films 167-71; 197. Also Margaret Coatsworth accused of poisoning her former husband, Jacob Carr, 1721. NRO QSB 55, fols 56, 118-9. No doubt this was exacerbated by the lack of forensic techniques to uncover poisoning as a cause of death.

⁷² *Dangers*, pp 228-9.

⁷³ For the threat to poison as a form of female empowerment see George Robb, 'Circe in Crinoline: Domestic Poisonings in Victorian England', *Journal of Family History*, 22, 2 (1997), 179-80, 186-7.

⁷⁴ BI, *Currie c. Currie*, 1729. Three physicians, in a discussion about James at one of their shops in Carlisle, amusingly agreed that they would have little credit of their patient, unless they could cure him of a bad wife. Grief and the problems in his family caused his distemper. Only Mary Huthart supported the allegations. She said he was skeletal since marrying, and that Jane occasionally put white power in his food. There again, Mary was his thirty year-old spinster niece, to whom he gave charge of the house, instead of his wife. There was no love lost between Jane and Mary.

We must make haste, for when we Home are come,
 Alas! we find our Work but just begun;
 So many Things for our Attendance call,
 Had we ten Hands, we could employ them all.
 Our Children put to Bed, with greatest Care
 We all Things for your coming Home prepare:
 You sup, and go to Bed without delay,
 And rest yourselves till the ensuing Day;
 While we, alas! but little Sleep can have,⁷⁵

It is difficult to locate men in the household at all, in an 'unproductive' capacity, in the late seventeenth- and eighteenth-centuries. Prescriptive sources in the early modern period do little to help. Male and female work was differentiated. Whereas writers who theorised about the relative merits of female and male vocations discussed female activities in terms of domestic duties, men's callings were defined as an occupation, in effect a skill carried out to make money.⁷⁶ The Marquis of Halifax warned that a husband's 'Province is without Doors', and that the 'Oeconomy of the House' would be indecent to him.⁷⁷ Didactic texts about marriage saw men in the household solely in terms of authority and emotion. In short, a married man was defined in terms of what he was rather than what he did. Indeed he was consistently drawn in terms of what he did not do.⁷⁸ Thomas Gisborne clumsily joked, 'that a husband who should personally direct the proceedings of the housekeeper and the cook, and intrude into the petty arrangements of daily oeconomy, would appear in all eyes, except his own, nearly as ridiculous as if he were to assume to himself the habiliments of his wife, or to occupy his mornings with her needles and work bags'.⁷⁹

⁷⁵ *The Woman's Labour: an Epistle to Mr. Stephen Duck in answer to his late Poem, called The Thresher's Labour*, quoted in Jones, *Women*, pp. 154-8.

⁷⁶ Michael Roberts, "'Words they are women, and deeds they are men': Images of Work and Gender in Early Modern England" in Lindsey Charles and Lorna Duffin (eds.), *Women and Work in Pre-Industrial England* (London, 1985), pp. 130-2; Mary Prior, 'Women and the urban economy: Oxford 1500-1800' in Mary Prior (ed.), *Women in English Society 1500-1800* (London, 1985), p. 95.

⁷⁷ Halifax, *Lady's New Year's Gift*, quoted in Jones, *Women*, p. 22.

⁷⁸ Significantly this, to some extent, is how masculinity was defined - in opposition to femininity. For example, Margaret Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (London, 1996), p. 7; Fletcher, *Gender*, pp. 322-346.

⁷⁹ Gisborne, *Duties of the Female Sex*, p. 149.

In contrast, advice literature harped on endlessly about idle wives. *The Newcastle Chronicle* printed an 'Extract from the Rev. Mr Franklin's Sermons; on the Duties of the GOOD WIFE and the GOOD HUSBAND', on its front page in 1765. Quoting Solomon, Franklin intoned that the ideal wife 'looketh well to the ways of her husband, and eateth not the bread of idleness'.⁸⁰ Men, however, were permitted to rest once they had finished their paid work.⁸¹ Interestingly, in order to emphasise their inappropriate behaviour, adulterous wives were presented as neglecting their household role.⁸² When Mary Babb was described entertaining her lover in 1666, she was pictured interrupted in her household duties. On one occasion she was in her washing clothes, wearing only her smock sleeves and a little under-coat. The verbal portrait emphasised the betrayed intimacy. She also neglected her maternal duties. Robert Stainye, a smith, who visited Clepston Forge recounted with some distaste that 'he hath knowne her ... goe away with ... Richard and left her husband in the house all night divers tymes to looke to the children'. This was clearly considered a topsy-turvy state of affairs.⁸³ Some wives were represented abusing their role of caring for their husbands in sickness. Mary Greenwood apparently persuaded her ill husband to go for a month to Matlock for his health, in order to allow her lover, John's saddler, to sleep every night in the house. She justified his presence by explaining that he was a guard in case the house was broken into.⁸⁴

One or two historians have attempted to examine how deeply the domestic double-standard cut. Alice Clark hypothesised that young unmarried men were partly employed in household work as servants and apprentices; married men, working in the home, were involved in the education of their children.⁸⁵ Unfortunately there is no evidence for this

⁸⁰ *Newcastle Chronicle*, 31 August 1765, p. 1.

⁸¹ Davidson, *Woman's Work*, p. 190.

⁸² Also Elizabeth Foyster, 'A Laughing Matter? Marital Discord and Gender Control in Seventeenth-Century England', *Rural History*, 4 (1993), 11.

⁸³ BI, CP.H/2688, C.P. H/2807, *Office c. Babb*, 1666. Robert Stainye's deposition.

⁸⁴ BI, *Greenwood c. Greenwood*, 1796. See also *Carr c. Carr*, 1800. Susannah Carr persuaded her husband to go away for his health in June 1796. In his absence she treated all the servants to a play, which starred Mrs Siddons, during which time she brought her lover into the house and entertained him with cream curds, berry pie, and chocolate.

⁸⁵ Alice Clark, *Working Life of Women in the Seventeenth Century*, 3rd edn (London, 1992), p. 5.

domestic role. Shani D'Cruze suggests that some men contributed to strictly domestic duties such as assisting with children, during unemployment or illness.⁸⁶ Poorer husbands, who were unable to employ help during their wives' lying-in, might also take on domestic tasks. But these were largely emergency situations. The complaints of spouses about their marriages lend no credence to the hopeful proposals; neither is it expressed in legal documents or the provincial press. Joseph Watson summed it up when he wrote to his wife pleading with her to return to him and their inn in Wolsingham, after she left him in January 1799, unable to cope with his cruelty any longer. He griped, 'I wish as I all ways Did to leave to thy self and every thing Else that belongs to a woman as I do not like womans work but I am some what more acquainted with it then I wish'd to be'.⁸⁷ For all they might take it for granted, men relied upon their wives' work in the household.

The proper state of affairs in household management is revealed by husbands who defended themselves against accusations of cruelty. They made it clear that their wives had all the perks of directing the affairs of the household. James Currie constructed himself as the ideal husband. At marriage, he 'charged and commanded his Children by a former wife and Servants to be observant and obedient to her [Jane] in every thing as much as possible, and ... [he] committed the Trust and management of his House to her care, made her privy to, and acquainted with all his affairs'.⁸⁸ Robert Shaw claimed in 1696 that his wife 'had her owne Will in the management of her said House and was seldome or never contradicted or disturbed by' him. Once a husband delegated management he was supposed to be able to leave his wife to the job, at most taking an overseer's role. Of course, this did not always work. Despite his claims, Robert and Anne Shaw found this relationship difficult to achieve in their twenty-year marriage.

⁸⁶ D'Cruze, *Diligence and 'Usfull Pride'* [sic]: gender, industrialisation and the domestic economy, c. 1770 to c. 1840', *Women's History Review*, 3, 3 (1994), 322. For similar emergencies when spouses swapped roles see Olwen Hufton, *The Prospect Before Her: A History of Women in Western Europe, 1500-1800* (London, 1995), pp. 151-160; Davidson, *Woman's Work*, p. 186.

⁸⁷ DDR, *Watson v Watson*, 1801. Letter presented as exhibit C.

⁸⁸ BI, *Currie c. Currie*, 1729.

Their servant recalled returning from Selby market, to be met by her master who asked whether she had bought a joint of meat. She replied that she had not, following her mistress's instructions. This antagonised Robert who retorted that 'it was a hard case that he cu'd have no sway in the management of his owne house'. He retaliated by telling the maid that Anne had once been furious with him simply for giving away a cup of beer. Anne, by now standing outside at the window, overheard this indiscretion and fell into a great passion. She screamed abuse through the window, until he went outside and doused her repeatedly with water.⁸⁹ When a husband challenged his wife's role, the result was a disordered household.

Apparently this was one symbol of a bad marriage. A quarter of the cruelty separation causes, and one restitution cause which alleged cruelty (11.70% of total suits), claimed that a husband had denied his wife her right to manage the household (see Table 10, p. 56).⁹⁰ Esther Bowes, of Staindrop, stated that in September 1717 her husband, Jonathan, publicly discharged her from 'acteing or doeing any Matter or thing Relateing to the Managem[en]t of his House'.⁹¹ The refusal to delegate household government was physically enacted by a husband removing the household keys from his spouse.

Disorder was exacerbated when husbands elevated servants above their wives.⁹² This was deeply humiliating since wives automatically had authority over servants. In 1676 the Allensons' servant, Margaret Green, deposed that Charles Allenson would not allow his wife to get anything for him, or cut up his meat, but would ask a servant. She had heard Grace, 'very kindly say honey I could or would have given you that and he would reply god damne her he would have nought of her giveing'.⁹³ Over a century later,

⁸⁹ BI, *Shaw c. Shaw*, 1696 (according to Anne he also pushed her about).

⁹⁰ Lady Sarah Cowper was furious that her husband refused to let her hire, fire, or discipline servants, and controlled household supply and expenditure. Anne Kugler, 'Prescription, culture, and shaping identity: Lady Sarah Cowper (1644-1720)' (University of Michigan, PhD Dissertation, 1994), pp. 54-7.

⁹¹ DDR, *Bowes c. Bowes*, 1718.

⁹² For nineteenth-century examples see A. J. Hammerton, *Cruelty and Companionship: Conflict in nineteenth-century married life* (London, 1992), pp. 93, 98, 114-5.

⁹³ BI, *Allenson c. Allenson*, 1675.

James Lees of Saddleworth preferred to give the money for common necessities or provisions to his servants instead of his wife.⁹⁴ The mayor of Beverley, John Greaves, sued by his wife for cruelty in 1704, bid his servants never to show any respect to her, or do what she said. Eventually they abused her and kept the household keys from her.⁹⁵ Often the wife was made to wait upon her servant. Sarah Walton claimed that her husband invited Cuthbert Douthwaite and his wife to their home in Lanchester, delivered the keys of the house and his chests and trunks to Mrs Douthwaite and instead used Sarah as his servant.⁹⁶ Henry Currer went one better in the 1670s and committed the care of household affairs to his mistress. In 1720 when Elizabeth Mills had her husband bound-over for beating her, she also complained that he 'gave the trust of all the keys belonging to this Informant to Margaret Hall' with whom William Mills was having an affair.⁹⁷

Obviously wives felt a personal insult by being removed from housekeeping. Even the words used to describe the function, such as 'trust' and 'care', signify that these husbands no longer trusted or loved their spouse. The actions undermined womanhood, because household management was one of its key features. As *The Ladies Dictionary* of 1694 declared, in its section on keeping house and ordering and governing a family,

Keeping a house well ordered, and the family affairs well managed and regulated, is no such easy matter as some ladies imagine it and therefore there is a great reputation to be gained in the prudent performance and discharge of such a care and trust, more especially incumbent on those that are entered into a married state; for it not only turns to advantage but procures a true respect and esteem.⁹⁸

This can also be seen in eighteenth-century obituaries of married women. In *The Newcastle Journal* Mrs Weatherby, wife of a Gateshead Mercer, received fulsome praises in death for her 'Oeconomy, Tenderenesse and Prudence [in] her conjugal and

⁹⁴ BI, *Lees c. Lees*, 1803.

⁹⁵ BI, *Greaves c. Greaves*, 1704.

⁹⁶ DDR, *Walton c. Walton*, 1718.

⁹⁷ BI, *Currer c Currer*, 1673. NRO QSB 54, fol. 39.

⁹⁸ Quoted in N. H. Keeble (ed.), *The Cultural Identity of Seventeenth-Century Woman: A Reader* (London, 1994), p. 190.

parental capacity'. Mrs Watson, the wife of a gentleman farmer was valued as 'A pattern of industry and hospitality'.⁹⁹ Ironically, a husband's failure to allot his wife her appropriate position in the household damaged his own reputation. Jane Ballantine, a friend of James and Jane Currie, warned James that she had heard from his neighbours that he had taken the command of everything in the house from his wife and given the keys to Mary Huthart, their servant, 'which usage ... [Mrs Ballantine] told him was too cruel and unbecoming a Husband'. James felt the criticism deeply, for he accused his wife of traducing and blackening his name amongst his neighbours by reporting that he had taken the keys from her.¹⁰⁰

VI

It has been said in a different context that women were prized for reproduction and men for production. But northern middling-sort and lower-rank wives had an essential and acknowledged productive role.¹⁰¹ Women's input to the domestic economy was pervasive and extended past their unpaid work in the household into assistance in the family business and paid work. The inclusive nature of their work is illustrated in 'An Unfortunate Husband's' 'letter', printed in *The Newcastle Chronicle* in 1764. He bemoaned that his wife's extraordinary piety led her to refuse to mind his haberdashery shops, or care for her husband and children. Strikingly, the term he chose to encapsulate these roles was 'domestic concern'.¹⁰² Albeit not structured to give much insight into day-to-day occupations, the northern matrimonial court records shed light on women's

⁹⁹ *Newcastle Journal*, August 30-6 September 1760, p. 2; *York Chronicle*, August 13 1773, p. 278. For eighteenth century obituaries and biographies of women in the press, see Stephen Howard, "'A bright pattern to all her sex": representations of women in periodical and newspaper biography' in Hannah Barker and Elaine Chalus (eds.), *Gender in Eighteenth-Century England: Roles, Representations and Responsibilities* (London, 1997), pp. 230-49.

¹⁰⁰ BI, *Currie c. Currie*, 1729.

¹⁰¹ Lynn Abrams makes this distinction in 'Whores, Whore-Chasers, and Swine: The regulation of sexuality and the restoration of order in the nineteenth century German divorce court', *Journal of Family History*, 21, 3 (1996), 268.

¹⁰² *Newcastle Chronicle*, 8 September 1764, p. 1.

work and its importance to their husbands. For example, an attack on his wife, by Henry Giles, a farmer, describes her spinning at the time.¹⁰³

Women often assisted their husbands in ^{their} ~~his~~ trade. Ann Watson, who sued her husband, an innkeeper in Wolsingham, Bishop Auckland, for separation on the grounds of his cruelty in 1801 helped to run the inn. His letters to her, after he had turned her out, pleaded with her to return because this would be the best chance of his custom increasing.¹⁰⁴ Married women in middling-sort partnerships did bookkeeping and managed debt re-payments for the family business. Mary Hoggit, the wife of a Sunderland master mariner, explained in 1766 that when her husband went to sea she managed his quarterly payments on a sum borrowed to finance a ship. Furthermore, she paid the money not to the agent who had organised the debt, but to his wife.¹⁰⁵ A painter in 1718 commented that he bought some cork from Joseph Avern's shop and Mary 'as his wife' received the money.¹⁰⁶

Elizabeth Dent's Allegation in 1722 promoted herself as a good wife. This was primarily to do with improving her husband's fortune and circumstances, while he was away in London as a witness for Samuel Dalton in the latter's court case. John Dent was a joiner who also ran a pub. Elizabeth emphasised that she rendered a true account of her work to him and delivered all money and securities to him before he turned her out.¹⁰⁷ Higher status women routinely took control of their husbands' business affairs in their absence.¹⁰⁸ In the mid 1750s, William Ettrick, a member of one of Sunderland's

¹⁰³ DDR, *Giles c. Giles*, 1744.

¹⁰⁴ DDR, *Watson c. Watson*, 1801. For the importance of wives in attracting and serving customers in the family tavern, inn or shop see Peter Earle, *The Making of the English Middle Class: Business, Society and Family Life in London, 1660-1730* (London, 1989), pp. 162-3.

¹⁰⁵ BI, *Ettrick c. Ettrick*, 1765. Mary Hoggit's deposition, 18 November 1766. Also see Hufton, *Prospect Before Her*, pp. 149, 152, 162-3.

¹⁰⁶ BI, Trans. C.P.1721/3, *Office promoted by Gallimore c. Avern*, 1718.

¹⁰⁷ BI, *Dent c. Dent*, 1722.

¹⁰⁸ For a convincing critique of the concept that gentry women were idle, see Amanda Vickery, 'Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History', *The Historical Journal*, 36, 2 (1993), 407-11.

leading, and most eccentric, families, went to the East Indies for four years. Departing in a cursing temper from his pregnant wife of a couple of years, Catherine, he still organised power of attorney for her once he got to London, 'being very well convinced of her care and Management both of her Family and his Affairs'.¹⁰⁹ There is a hint that wives became involved with the duties of their husbands as parish officials. Robert Johnson, a husbandman and overseer of the poor in Hawksar, near Whitby, gave evidence in a bastardy case in 1751. Having persuaded a disgruntled husband to return home with a baby that he believed was not his own offspring, the man returned a few days later during the overseer's absence. Nevertheless, clearly not expecting anyone to be surprised, Johnson explained that his wife took over and made the decision to put the child out to nurse (a judgement that was apparently not overturned).¹¹⁰

Ideas about spousal occupational complementarity have recently been criticised. The seminal study of women's work in the domestic economy is Alice Clark's *Working Life of Women in the Seventeenth Century*. In her 'Family Industry' model, the family was the unit for the production of goods and wives actively contributed to their husband's trade, craft, shop or farm. Profits were considered to belong to the family unit, not to individuals.¹¹¹ Alice Clark's laudable attempts to recognise the importance of married women's contribution to the domestic economy are often derided as the futile attempts of a discontented early twentieth-century woman to locate an ideal time when women were accorded respect for their work.¹¹² There are some truths in the criticisms.¹¹³ Information about the work of women can be contradictory about how far it was

¹⁰⁹ BI, *Ettrick c. Ettrick*, 1765. One of their many areas of dispute centred on whether Catherine had managed the estate efficiently or, as in William's opinion, lent out money at too small an interest, contracted debts, and only saved him £500 out of the rents, not the £1000 she claimed. He also accused her of getting £200 by selling his family furniture and paintings. For the remarkably entertaining family history of the Ettricks, see E. Watts Moses, 'The Ettricks of High Barnes', *Antiquities of Sunderland*, 20, 1932-1943, (1951), pp. 9-21.

¹¹⁰ NYCRO QSB/1751, examination, 14 October 1751, MIC 137.

¹¹¹ Clark, *Working Life*, pp. 6-11.

¹¹² For a standard critique, see Amanda Vickery, 'Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History', *The Historical Journal*, 36, 2 (1993), 402-3. For a balanced and sympathetic critique, see Erickson's introduction, Clark, *Working Life of Women*, pp. xiii-xviii.

¹¹³ Her chronology is at fault, as is her inability to distinguish between capitalism and industrialisation.

complementary to men's work. For example, in his influential study of women's employment opportunities Peter Earle challenges Clark's thesis that wives had an active role in their husband's work.¹¹⁴

Obviously some men did not work within the household environment, so their trade was less likely to involve their wife. A separation of work was particularly the case in second marriages. Margaret Sayer was a successful ale seller when, as a widow, she married a joiner. Indeed her independent work allowed her to leave him when she discovered how incapable he was of supporting a family.¹¹⁵ Sixty percent of the 427 married women that Earle studied were wholly or partly supported by their own employment. Only twenty-six of the 256 employed wives stated that they worked with their husbands. Yet a closer reading of Earle's figures demonstrates that wives, as opposed to lone women, were much less likely to be wholly maintained by their own employment. Of the wives, 32.6% supported themselves, compared with 73.2% of widows and 77.6% of spinsters. Just over 27% of the wives were partly maintained by their own work. So 40% of the wives fall into Earle's category of having no paid employment.¹¹⁶

The status of wives that Earle used is somewhat different to those considered by Clark. His sample was biased towards poorer women, with artisan and working-class women making up the bulk. The fully employed wives were the poorest of the sample, whereas '[n]o woman whose husband was described as a master said that she worked for her living. The same holds true for the wives of most of the gentlemen, the professionals,

¹¹⁴ His work on female witnesses at London consistory court from 1695 to 1725 reveals that women worked in the same four main occupations as they did in 1851, that is domestic service, making and mending clothes, charring and laundry and nursing. Significantly, all jobs that are related to housewifery skills. Peter Earle, 'The female labour market in London in the late seventeenth and early eighteenth centuries', *Economic History Review*, 2nd. ser., 42, 3 (1989).

¹¹⁵ BI, *Sayer c. Sayer*, 1711.

¹¹⁶ Earle categorised answers to the question put to witnesses about how they got their living and were maintained. His category of 'wholly' maintained means no other source was given, 'partly' maintained means that another category of support was also mentioned. Some were maintained from more than one of his categories. Earle, 'female labour', pp. 337-342.

the more skilled artisans and the more distinguished and better paid generally'.¹¹⁷ The latter women share more of the characteristics of Clark's family industry model, and as the northern court records infer, it is unwise to assume that they did no work at all. Margaret Hunt observes that wives of shopkeepers frequently dealt with retail sales, but because they were not bringing in money independently they would fall outside Earle's category of working wives.¹¹⁸

Essentially, Alice Clark's basic tenets that spouses were economically mutually dependant and that wives had a vital role in the domestic economy survive, if the contribution of married women who worked with their husband and those who worked outside the home for wages are not differentiated.¹¹⁹ In some middling-sort households production and consumption were based around the family business, whereas for the lower middling-sort and the poor the domestic economy often depended upon both spouses working for wages, usually in different occupations.¹²⁰ In most households, female economic input was essential, whether in the form of wages earned from going out to work, doing piece work, or from unpaid assistance in the family business.¹²¹ In addition, wives contributed essential goods or money, in the form of a portion, to marriage.¹²² There is no doubt that wives' work, both paid and unpaid, was accorded second-class status in the household hierarchy. Yet this functioned alongside a relatively equal dependence upon spousal economic input.¹²³

¹¹⁷ Earle, 'female labour', pp. 332, 338.

¹¹⁸ Married women in trade-related activities often failed to define themselves as independent traders, instead using the title 'wife of'. The poor status of much women's work may have caused them to define themselves by their spouse's trade. Hunt, *The Middling Sort*, pp. 128-9.

¹¹⁹ Clark argued that work outside the home for wages removed the independence of wives and downgraded their value in the eyes of others. Clark, *Working Life*, pp. 12, 290, 297-9.

¹²⁰ Hunt, *The Middling Sort*, p. 128; Anna Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (London, 1995), pp. 16-17.

¹²¹ In eighteenth- and nineteenth-century agrarian labouring families, women's cash earnings provided almost the same income as their husband's wages. Women in landholding families provided half of household production. Erickson's introduction, Clark, *Working Life of Women*, pp. xix, xxv.

¹²² A. L. Erickson, *Women & Property in Early Modern England* (London, 1993), p. 182.

¹²³ *ibid.*, p. xx. p. 195. Also see Jan de Vries, 'Between purchasing power and the world of goods: understanding the household economy in early modern Europe' in Pamela Sharpe (ed.), *Women's Work. The English Experience 1650-1914* (London, 1998), p. 228-9.

CHAPTER EIGHT

'which Perverseness in her': attitudes to ownership within marriage.

I

Conflict over real and personal property emphasises that marriage was understood to be a joint economic venture. Female input to the domestic economy was substantial. Women's material contributions, both at the start of matrimony in the form of portions, and in paid and un-paid work during marriage, provided them with a number of expectations that sometimes clashed with men's as well as with their status under coverture. Essentially, conflict over real and personal property was due to differing notions of ownership within marriage.² Under the common law fiction of coverture, women retained no property at their own disposal or control. At marriage, real property owned by a woman came under the control of her husband who was unable to dispose of it without her consent. Personal property, however, was transferred outright to a husband and could be disposed of by him without her permission.³ Yet there is evidence that both men and women thought ultimately in terms of divided property which was pooled during marriage. Shared ownership, however, was the benign face of coverture. Failure of trust led to both spouses rejecting any such concept and, regardless of their position under law, claiming sole possession of marital goods.

Over 19% of cruelty, restitution and adultery causes referred to conflict over money or personal and real property (see Table 10, p. 56).⁴ Allusions to similar problems arise in newspaper adverts, while in the courts of quarter sessions financial issues were usually

¹ John Sander's advert stated that his wife's perverseness led him to think that she would take money in his name. *The Newcastle Journal*, 4-11 September 1756, p. 3.

² Personal property included money, debts, clothing, household furniture and food; real property was land. A. L. Erickson, *Women and Property in Early Modern England* (London, 1993), p. 23.

³ Husbands could also dispose of a wife's leasehold lands. Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Oxford, 1983), pp. 20-3; Erickson, *Women and Property*, pp. 24-8. Interestingly, it was often moveable goods that were fought over most vociferously.

⁴ Male violence was sometimes perpetrated to coerce a wife or her family into providing money. Margaret Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (London, 1996), p. 154.

confined to the basic needs of maintenance. Most of the problems turned upon married women's property ownership during wedlock. As John Twentyman, a neighbour of Jane and James Currie, deposed, it was well known in the town that 'neither had any respect or love for each other immediately after their intermarriage, nor no inveterate Malice or Hatred, but differ'd about her parting with her Fortune to him.'⁵

Many of the instances of financial dispute illustrate those unions that included one or two widowed parties were conspicuously subject to financial disagreement. Of the twenty-seven couples before the church courts who experienced such problems, twelve involved widowed partners. Overall, more than a quarter of separation and restitution suits, where former marital status was stated, involved one or two spouses who had been married before (see Table 13). This was higher than the national figure for remarriages, which, according to Wrigley and Schofield, declined from 30% in the seventeenth-century to 11.27% in the mid-nineteenth-century. Detailed data from two parishes gives a hint of eighteenth-century rates. The percentage of all those marrying who were widows or widowers in Landbeach in Cambridgeshire was 19.2%; in Beccles, Suffolk the rate was 21.2% in the first half of the century, falling to 17.4% after 1781.⁶

Table 13: Instance causes in York and Durham ecclesiastical courts where one or both partners were widowed at marriage.

	<i>Cruelty</i>	<i>Restitution</i>	<i>Adultery</i>	<i>Total</i>
Husband	3	2	1	6
Wife	9	3	1	13
Both	4	1	1	6
<i>Total</i>	16	6	3	25

Second marriages often got a bad press in the eighteenth century, largely for their incendiary characteristics. Re-marrying spouses may have been less accommodating. Popular images of widows certainly insisted that women marrying for a second time

⁵ BI, *Currie c. Currie*, 1729.

⁶ E. A. Wrigley & R. S. Schofield, *The Population History of England 1541-1871* (London, 1981), pp. 190, 258-9.

were more determined to protect their property. A letter from 'Mrs Tittletattle' about the character of ladies who composed the membership of the 'Scandal Club', included one such widow. 'Widow Brisk' was a thirty year-old woman who had already buried a third husband. She was an 'avowed Enemy against Marriage', although not love, and frankly claimed 'no one Man shall ever be Master of her Fortune and Joyntures, tho' she may dispose of her Person as she thinks proper'.⁷ It is difficult to avoid speculating that this caricature was factual, considering women's state under coverture. Some of the husbands who had married widows manipulated another stereotype by insisting that their wives had been in conflictual relationships with their first husbands. When Henry Currer sued his wife for restitution in 1673, she counter-accused him of cruelty. Henry's first article of his Personal Response declared that she had lived in contention with her former husband.⁸ Basically, however, it is not surprising that these marriages suffered conflict over finances. They had more complicated financial circumstances due to the deaths of previous spouses.

II

The financial disputes show that women did not accept the common law precept that at marriage, unless they had a separate settlement, they lost ownership of personal possessions, as well as control of their real property. While married women's disabilities under common law were legion, too much emphasis can be placed on the common law and too little on popular perceptions (as well as other forms of law).⁹ For example, Margaret Hunt argues that men 'monopolized most of the material resources' of

⁷ *GM*, vol. 10, July 1740, p. 345.

⁸ BI, *Currer c. Currer*, 1673. Also see DDR, *Watson c. Watson*, 1801. The latter male defendant claimed his wife's ill conduct and behaviour had driven her former husband to suicide.

⁹ For the inconsistencies of coverture, and individuals' supposed ignorance or manipulation of it, see Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998), pp. 130-5.

marriage, and that women owned nothing of their own.¹⁰ But she ignores that many women tended to see certain goods, which they had bought, earned or been given, as continuing to belong to them after the wedding ceremony.¹¹ This is most acutely illustrated by the complaint that wives conveyed away goods from the marital home. Some removed them to another place, others pawned them and kept the cash. Just over 17% of separation and restitution causes alleged that a wife had removed household goods (see Table 10, p. 56), and more than 16% of the elopement and debt adverts contained the claim. The items concerned were moveable goods, most commonly described as things of value, household goods or articles, then linen and plate. Next in order of frequency was money, followed by household furniture, papers, writings or securities, and silver or gold.

Typically, Elizabeth Finch 'secretly and clandestinely conveyed out of his [Samuel Finch's] House and for her own private purposes secreted or disposed of various goods belonging to her spouse. Samuel wrote to Elizabeth after she left, and explained how injured he felt that she had taken away goods so that he was not even left with as much as a towel on which to dry himself.¹² Elizabeth Idelle had broken open several doors of chests belonging to her husband William, in Kingston upon Hull, and purloined writings and other goods.¹³ When Henry Meadley's wife eloped with her lover she took Henry's brown gelding with her.¹⁴ Luke Hedley, a shipwright from Newcastle, denied his wife

¹⁰ Margaret Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth-Century London', *Gender & History*, 4 (1992), 18-19.

¹¹ This was no eighteenth-century phenomenon. In the early seventeenth-century, William Gouge had faced a notoriously negative response from female members of his congregation, when he informed them that a wife must not dispose of the common goods of the family without her husband's consent. Quoted in Erickson, *Women and Property*, p. 9.

¹² BI, *Finch c. Finch*, 1779. Some of the material from this cause, including correspondence, remains in the University of Durham's Diocesan records, not having been transmitted at the appeal. This letter to Elizabeth was dated 9 January 1779. In it Samuel complained that as a result he would have to leave his native country. The following year he moved to Jedburgh in Scotland where he lived until his death in July 1781.

¹³ BI, *Idelle c. Idelle*, 1706. See also BI, *Dobby c. Dobby*, 1719. Robert Dobby admitted to breaking some household goods, but only in response to his wife stealing the majority of his household goods, linen and best furniture. Actually, she took away the goods, worth £20 to £30, that he received with her at marriage.

¹⁴ *The Newcastle Chronicle*, 26 August 1765, p. 3. Although Henry described both the gelding and Christopher Barker, the man with whom his wife had eloped, it was for the return of the gelding that he offered a guinea.

his credit because during his absence at sea she absconded, after selling all the household furniture and wearing apparel.¹⁵

It is easy to understand why women believed that the goods they brought to marriage remained their own. Amy Erickson shows that most women brought a portion to marriage which could consist at least of clothing, household goods, cash, or animals. She explains that many women amassed a portion from a combination of inheritance and gifts from parents, or other family members, and savings from earnings, often begun in their teens.¹⁶ Furthermore, the advertisements denying credit to wives illustrate that they purchased most household items.¹⁷ Such a personal process of accumulation must have stamped possession very firmly on the goods for these women.

Pertinently, the few studies of women's attitudes to their possessions do not replicate the narrow concept of ownership allowed by coverture. Material possessions had specific meanings for their female owners. Amanda Vickery's examination of Elizabeth Shackleton's diary and accounts from the second half of the eighteenth-century, as well as evidence from male and female wills, and Maxine Berg's study of Birmingham and Sheffield bequests, arrive at similar conclusions. In Berg's words, '[c]lothes, light furnishings, marked and table linens, tea ware and china were for women personal and expressive goods, conveying identity, personality and fashion'. This was less so for men, who tended to refer to tools, livestock, or business stock.¹⁸ Most of this evidence comes from widows' wills, but it is obvious that their perceptions of ownership did not just spring into life at their husband's death.¹⁹ This is made abundantly clear by the fact

¹⁵ *Newcastle Chronicle*, 3 November 1787, p. 3.

¹⁶ It was only unimportant to the vagrant poor. Erickson, *Women and Property*, p. 85.

¹⁷ See chapter seven, pp. 147-53.

¹⁸ Amanda Vickery, 'Women and the world of goods: a Lancashire consumer and her possessions, 1751-81' in John Brewer and Roy Porter (eds.), *Consumption and the World of Goods* (London, 1993) pp. 274-301; Maxine Berg, 'Women's Consumption and the Industrial Classes of Eighteenth-Century England', *Journal of Social History*, 30, 2 (1996), 415-34.

¹⁹ Erickson, *Women and Property*, p. 186. Also see Christine Churches, 'Women and property in early modern England: a case-study', *Social History*, 23, 2 (1998).

that most women anticipated being left at widowhood with what they had brought to marriage. Erickson demonstrates that the courts often upheld this understanding.²⁰ True divorce also permitted wives to re-have the goods which they had before marriage.²¹ At separation, women seem to have expected the same sort of return. Perhaps female ownership was not crucial when a husband was respected and loved, but if that failed wives soon discarded any notion of shared ownership.

Female responses to accusations that they had stolen goods from their husband or the household underline Amy Erickson's proposition that, 'coverture was - socially at least - a fiction'.²² They strenuously denied any notion that they were stealing or taking advantage of a legal loophole. The property was simply their own. A letter from Elizabeth Harding, of Seaham, to her proctor, in 1742, explained that when she left her house, since she could no longer stay, being daily in danger of her life, she took 'my leneng and plate & soum thens of valey tha wer not of hes bying but he sas I sto hes goods' [my linen and plate, and some things of value that were not of his buying, but he says I stole his goods].²³ When Robert Shaw alleged that his wife had conveyed household goods from his house to her son-in-law's house, she replied that she had managed to return home after having been reduced to indigence by his turning her out, but still only took some necessities of small value for her own use. Furthermore, they did not compare to the goods he had already removed from her.²⁴

Quite often, property that wives conveyed away was specifically that which they had owned before marriage. Charles Allenson, of York, submitted a schedule of all the things that he claimed his wife had removed in 1676, which included various table- and

²⁰ Erickson, *Women and Property*, pp. 137-9, 150.

²¹ Unless the husband had already distributed them. Sir Thomas Edlyne Tomlins, *The Law Dictionary*, 4th edn, (London, 1835), vol. 1, x, xi. Separation from bed and board did not entitle a wife to the same right, although she did retain her right to dower.

²² Erickson, *Women and Property*, p. 226.

²³ DDR, *Harding c. Harding*, 1742.

²⁴ BI, *Shaw c. Shaw*, 1696.

bed-linen, silver items, lace, ribbons, jewellery and children's linen. In Grace's opinion she took with her goods that were either her own before marriage, or that she needed for the child with which she was pregnant. She told the court the history of the items. For example, the silver lace came from her wedding gown, the ribbons were old ones from her clothes, one ring was given by her husband before marriage, the bracelets belonged to her before marriage, and the gold watch was given by her brother prior to the wedding. When an item had been given to her before marriage, Grace simply did not conceive that it belonged to her husband thereafter.²⁵

These husbands were legally at a loss, because they were unable to prosecute their wives. If a wife took her husband's goods it was not a felony. Even if she took them and delivered them to a stranger, it was no felony in the stranger.²⁶ In Lee Holcombe's words, larceny 'was legally defined as taking possession of goods without the owner's consent. Since a man became the owner or at least the custodian of his wife's property, then his appropriation of this property did not constitute a crime - he could not steal from himself. A woman who took her husband's goods was presumed to be acting with his consent in her status of wife'.²⁷ Nonetheless, northern husbands generally saw the act as stealing. Although defined, somewhat neutrally, in court as conveying away goods, in the press wives were reported by husbands as having plundered, robbed and embezzled from them. One was colourfully described as having 'lavishly, wantonly and expensively, made waste, pawned, destroyed, and pledged several household goods, wearing apparel, and other effects belonging to her said husband'.²⁸ Their feelings were

²⁵ BI, *Allenson c. Allenson*, 1675. Grace's opinion was not too divorced from legal reality. Although female personal possessions became the property of the husband, paraphernalia (clothes, personal ornaments (jewellery), bed linens and plate), was less clear cut. These items could be disposed of by a husband or be seized by creditors at his death, but unlike personal possessions they reverted to the widow. See Maeve Doggett, *Wife Beating and the Law in Victorian England* (London, 1992), pp. 36-8.

²⁶ Richard Burn, *The Justice of the Peace and Parish Officer* (4 vols, London, 1763), vol. 4, p. 384. For an unusual contrasting opinion that if the wife's lover received the goods it was a felony in him, see Tomlins, *Law Dictionary*, vol. 1, v, vi.

²⁷ Holcombe, *Wives & Property*, pp. 28-9.

²⁸ *Newcastle Courant*, 2 January 1779, see also *Newcastle Journal*, 24-31 December 1768.

summed up by William Hall, a Cumberland miner, who complained that his wife was 'not legally qualified' to pawn his household goods.²⁹

Wives took advantage of this legal immunity. A wife had no choice but to convey away goods if she wished to retain them after separation, because a husband retained his right to manage and gain income from his separated wife's real property and choses in action, as well as continuing to own her personal property.³⁰ This explains why these women's actions seem to have been planned. Removal of goods was usually done in the husband's absence, as the foundation for leaving him. As Thomas Nanson, an innkeeper in Bishop Auckland, put it, in 1747, his wife, Eleanor, without his knowledge or consent, did 'convey away, pawn, sell, and dispose of, or deliver to some Person, or Persons, in trust for her own Use' household goods, and 'hath since separated herself'.³¹

III

Another way to trace attitudes to ownership is through conflict over separate settlement, which was a specified property held in trust for the wife's sole and separate use during marriage.³² Separate settlement was notorious for its abuse by husbands who kicked or kissed their wives into consenting to give it over to them.³³ As several of the northern incidents reveal, wives were prepared to give their husbands access to their separate estate, if they were to be consulted as a joint owner. They objected when husbands took sole control, often expressing the fear that the men were putting the property at risk.

²⁹ *Newcastle Courant*, 6 June 1795, p. 3. If a wife pawned her clothes for money and then borrowed money to redeem them, however, the husband was not chargeable for the debt unless he had consented. Tomlins, *Law Dictionary*, vol. 1, vi, vii.

³⁰ Holcombe, *Wives & Property*, p. 32.

³¹ *Newcastle Journal*, 12 November 1748.

³² For pre-nuptial agreements see Erickson, *Women & Property*, chapters 6-8; for separate estate through bequest and by widows, Hunt, *The Middling Sort*, pp. 158-9.

³³ A number of cases were brought to Durham Chancery concerning disputes over the separate property of married women. Several occurred after a couple had split. Marcus Knight, 'Litigants and Litigation in the Seventeenth Century Palatinate of Durham' (University of Cambridge, PhD Thesis, 1990), pp. 347-54.

Catherine, a forty year-old spinster, held property protected by a separate trust when she married Robert Warburton, a fifty year-old widower, in 1792. At first, this pre-nuptial settlement did not cause dispute. The two lived together happily for four years until his family concerns led Robert to treat her differently. In 1797 Catherine permitted her trustees to allow Robert to take into his possession a farm consisting of a cottage and 106 acres of land in Thorp Arch, Yorkshire, which had been part of Catherine's separate settlement. For reasons that are not clear, but against her wishes, since it was not suitable to her rank or fortune, Catherine was taken by Robert to live at the cottage. It is possible that he was isolating her in order to put further pressure on her; for, in addition, Robert dismissed Catherine's maid. Instead, he employed servants under his immediate control, who prevented her from leaving. After a fortnight, however, she stopped trying to leave and was rewarded with the return of her servant. She stayed at the farm for three months during the winter of 1797-8. In April 1798 Robert took a house at Pontefract and moved Catherine there, vetoing her wish to live in York near her friends.

The crunch came at the end of that year, in December, when he asked her to give up yet more of her property. Catherine refused and once more Robert discharged Hannah Dickinson and brought in a couple who were ordered to keep Catherine in the house. Things came to a head when he took from under her pillow the keys to where her linen, plate, money and other articles were contained (her property due to the settlement). By this point she was obviously hiding her goods from him. Having got rid of all sympathetic servants, and still failing to persuade her, Robert dragged her upstairs on New Year's eve to a garret. Departing the house for a few days, he left her imprisoned in the dark, poorly heated garret during the coldest week of January, with the servant couple bringing food to her. Catherine's rescue was more by good luck than good management. She put her head into the chimney breast to communicate with her next door neighbour's housekeeper, who slept in the connecting garret. Trying to knock through a small hole between the bricks, she found that she could talk to the servant, who got her mistress to contact Catherine's trustees. They applied to Pontefract's chief

magistrate, who ordered Robert to appear, and in his absence they rescued Catherine.³⁴ It is interesting that the Warburtons' relationship was originally quite good, since Robert's form of persuasion, until he grew desperate, was to deny Catherine his emotional and sexual affection.³⁵ Catherine rejected Robert's increasingly extreme forms of blackmail when she feared that Robert sought sole control rather than joint ownership of her property. Fundamentally, she was worried that he would waste all of her estate.

In public at least, women were less concerned about their general legal handicaps under coverture, than the specific deceit of individual men. Often prepared to share their goods, it was when they realised that their spouse was untrustworthy that they backtracked. Even more experienced, independent women could be wrong-footed after the ceremony. With hindsight, Arthur Sayer, a joiner, who married Margaret Pocklington, a comfortably well-off ale-seller, in December 1710, plainly wanted access to her possessions. Perhaps Margaret did not organise some form of separate settlement because she believed Arthur to be a reasonable catch. After the wedding, however, she discovered that he was a very mean workman in his business and therefore unable to provide sustenance for his family. Arthur claimed, as was his right, goods and effects which belonged to her before marriage, and sought debts which were owing to her.³⁶ At this point she renounced any notion of joint commitment and acted, somewhat desperately, to prevent his obtaining all her goods. For example, she did her best to ensure that he would not find out who her creditors were. She ran a tally system, and a

³⁴ BI, *Warburton c. Warburton*, 1799.

³⁵ Robert would not sleep in the same room as her for five weeks, and treated her with indifference. Catherine asked her servant Hannah Dickinson to sleep with her, 'for your master wont and I can't afford so dear for a Bedfellow'.

³⁶ A husband could reduce his wife's choses in action into possession. The items covered included debts owing to the wife at marriage. Once they were converted into personal property, then he owned them. Doggett, *Wife Beating*, pp. 36-7.

tailor deposed that he had witnessed a quarrel between the Sayers when Margaret refused to tell her husband to whom the chalks upon a board belonged.³⁷

Married men were fully aware of their rights over their wives' property and clearly disliked what they felt was a deceitful form of separate settlement to which they had not agreed. As Amy Erickson observes, the portion a wife brought with her was the simplest means to improve a man's financial condition.³⁸ Henry Giles used his wife's portion to buy a property at Slaley. As his wife sourly commented in her separation suit, 'Wee bought a house and a piece of Ground that wee paid 130 pounds for it ... and when we paid for it he gave me the honour to pay away my own Fifty one pounds five shillings but never gave me Liberty to tell any befor [sic] or after it'.³⁹ If a wife took her portion away, or denied it, she hit her husband where it hurt, economically.

James Currie of Bromfield in Cumbria, a curate, was not consulted about his wife's attempts to prevent him getting his hands on her money. Both he and Jane were widowed when they married in 1727. James complained that she did not let him have the £400 that she owned at marriage. He insisted that although he had a right to receive this, she took 'the utmost pains and used the most artfull ways and means She was capable of to conceal her effects and the transactions of her affairs from ...[him]'. Indeed he was unable to get her to disclose various mortgages and investments. Jane did not seem to have taken the straightforward step of organising a separate settlement. Perhaps she objected to the cost of drawing up such a contract. Instead she claimed that although many of the goods had been delivered to her by her son Studholme, they belonged to him. Furthermore, the mortgage in question was given up to her other son, Michael,

³⁷ BI, *Sayer c. Sayer*, 1711. Margaret was unbowed by Arthur's treatment, and with the assistance of neighbours, set up again to sell ale. Nonetheless she said this only provided her with a bare subsistence and she fought Arthur's case *in forma pauperis*.

³⁸ Erickson, *Women and Property*, p. 90; Hunt, *The Middling Sort*, pp. 152-4.

³⁹ DDR *Giles c. Giles*, 1744.

shortly after it was made and prior to the wedding. Consequently, James felt personally defrauded by his wife, both emotionally and materially.⁴⁰

Charles Allison was willing to give some concessions to his wife, Jane, but balked at her attempt to secretly keep money from him. Both widowed, they married each other in Tynemouth, in November 1764. She was a mantua-maker and supplied funerals with cloaks and palls. According to her, Charles, a master mariner, had promised before their marriage that Jane had the right to dispose of what money she was worth before the ceremony, but he immediately laid claim to moneys owing to her at the time of her marriage. Charles denied making any promises to Jane. He claimed that on asking her what she had done with the money, cloaks and palls belonging to her before the ceremony, she answered that she had given them away the night before the marriage. Finding that some of the sums owing to Jane had been made payable to her brother for her own use, in order to prevent Charles from getting them, he retaliated by filing a bill against his brother-in-law in the High Court of Chancery. Jane therefore capitulated and Charles received the money due on these notes. Nonetheless, to appease Jane, he entered a bond to pay £85 to her brother in the event of her death.⁴¹ Significantly, this was the exact amount of the marriage portion that he received with Jane. Charles was forgoing his legal rights to retain her goods, by ensuring that the £85 would return to the heirs of her choice after her death.⁴²

⁴⁰ BI, *Currie c. Currie*, 1729. Husbands complained to the Court of Chancery about wives duplicitously arranging personal property before marriage. Erickson, *Women and Property*, p. 123.

⁴¹ DDR *Allison c. Allison*, 1765. Their whole marriage was a cycle of aggression and concession. At the end of the suit, when Charles gave a bond, in September 1766, to allow Jane to live separately with a maintenance, Thomas Davidson, Charles's lawyer, sent a copy of it to Jane's proctor, ending the letter with 'I verily believe after all they will go together again'. Indeed they did, almost immediately. The next year they had separated again, and the year after she sued him for restitution of conjugal rights. This may have been the final parting because he did not mention her in his will, made in November 1767. He died about five years later, leaving everything to his daughters. See DPR, 1772, Charles Allison.

⁴² Real property passed to a wife's heirs at her death. Choses in action which were converted into money became the husband's and were treated like personal property after her decease. It was only if he permitted her to make a will that she could pass on this property after her death, otherwise it remained her husband's to the exclusion of her children or family. Holcombe, *Wives & Property*, pp. 22-5.

IV

Reciprocity was the name of the game in marriage. Husbands felt that they offered economic assistance and security to their wives in return for their property. This was particularly so with second marriages. When Samuel Finch wrote to his wife, in January 1779, a few days after she had left him, he listed the financial 'favours' he had done for her and her children. He called her ungrateful because she had taken goods with her, and especially because she had received a present from her son and never informed Samuel. He only learnt about it in a letter.⁴³ If husbands objected to their wives secretly attempting to retain ownership of the goods they had before marriage, wives objected to their husbands abusing their financial responsibilities. These were not insignificant. As well as gaining ownership of his wife's personal property and control of her real property, a husband took on responsibility for any debts she owed before the ceremony. Indeed men could be sued to satisfy their wives' ante-nuptial obligations.⁴⁴

In popular and legal opinion husbands had to honour financial agreements taken on at marriage. Elizabeth Pighells petitioned the archbishop of York in the 1690s about her husband, the rector of Patterington. In the petition she complained that John Pighells would not uphold his promise to provide a jointure for her. Her father had supplied a portion and in return John was supposed to settle lands worth £30 annually upon her, in case she survived him.⁴⁵ Instead he promised to make provision out of another sum of money, but failed to do so. Finally he gave a bond into her trustee's hands that he would pay £70 a year during his life, to be put out at interest, as provision for her future maintenance. Again he had not paid the sum. Consequently she had preferred a bill in

⁴³ DDR *Finch c. Finch*, 1779, letter dated 9 January 1779.

⁴⁴ Tomlins, *Law Dictionary*, vol. 1, v, vi.

⁴⁵ Jointure was the annual sum agreed to be paid to a wife of a life-tenant, if she survived him. Often an annual percentage return on the dowry she brought to the marriage. B. English & J. Saville, *Strict Settlement: A Guide for Historians*, University of Hull, Occasional Papers in Economic & Social History, No. 10 (1983), p. 25. A cash portion brought by a wife was often used to buy land to provide an annual income. This would support the new couple, and/or be used to support the wife if she survived her husband. Erickson, *Women and Property*, p. 25.

Chancery against John, but found that in order to avoid the decree, John was attempting to get the archbishop's licence to be non-resident in his rectory and thereby abscond. She requested that the archbishop be just to her and refuse the licence.⁴⁶

A form of financial obligation specific to men who married widows with children was that due to step-children. Most often at issue in these couples disputes was men's failure to honour the inheritance requirements of children by a former marriage.⁴⁷ This was a cultural cliché; *The Gentleman's Magazine* described second marriages, in 1732, as 'Domestick Calamities', partly because the children of the first marriage were neglected in the second.⁴⁸ Their future financial upkeep was a principal consideration in plans to remarry. According to her and her brother-in-law, when Thomas Haswell courted Elizabeth Dodgshon, he offered to give her £40 in order to bind her son out as an apprentice, and to make her children equal to his own. This incentive is somewhat tarnished by the comments made by Elizabeth's twenty year-old son. He deposed that, about three years before, in 1725, Thomas warned him that if he and his sister were not pleased that their mother was Thomas's wife, he would take her away and leave them to fend for themselves.⁴⁹

Those husbands of widows who reneged on legal agreements were particularly reviled. Abigail Moor of Leeds, claimed that before their marriage, her husband, Henry, entered into articles in which he covenanted not to meddle with either the real or personal estate of her first husband, or of her father. Rents or profits for the use of her five children were to be received by trustees appointed by Robert Spencer, her first husband. Yet Henry retained the lands and was using the rents himself, leaving her and her children

⁴⁶ BI, *Pighells c. Pighells*, 1697.

⁴⁷ These were widespread concerns. Bequests which imposed restrictions on widows remarrying were primarily to ensure that property remained in the hands of the chosen heirs, and could not be dissipated by a new husband. Erickson, *Women and Property*, pp 168-9.

⁴⁸ GM, vol. 2, January 1732, p. 553.

⁴⁹ BI, Trans. C.P.1729/10, *Haswell c. Dodgshon*, 1727; deposition of Robert Motley, and personal answer of Elizabeth to the allegation and exhibits of Thomas.

liable to starve. He refused also to leave her a farthing unless she quit all claim upon his estate.⁵⁰ Jane and Henry Currer were married for about ten years and living in Burnley, when Henry sued her for restitution in 1673. As well as accusing him of cruelty in her defence, Jane lamented that he refused to pay her children's portions which their father had provided for them. This resulted in the children's trustee suing the couple. Jane's version was that Henry fled to Scotland for a year, out of the court's jurisdiction, leaving her to be arrested and put in York Castle gaol for twenty-two weeks. There had been an attempt to sort out finances. With the help of Henry's cousin, the couple agreed that Jane live separate from her husband, with her son, John. During the separation Henry would not receive any thirds out of John's estate in right of Jane, and John would pay them directly to his mother. If Jane returned to Henry, then John would pay the thirds to him. But Henry refused to sign and seal this agreement.⁵¹

As a result, men were careful in balancing their potential gains and obligations when considering matrimony. In 1727 Elizabeth Dodgshon of Durham City sued Thomas Haswell of Pittington (both widowed) because he failed to honour his declaration, made at two Quaker meetings, that he would marry her. She claimed that their mutual contract had been consummated.⁵² Thomas admitted only that he had courted Elizabeth and declared his intention to marry her. When he did so, however, he believed her to be a person of good substance with enough effects to pay her debts, make a portion for her children, and still have a considerable overplus. Following Quaker practice, a committee was set up to examine Elizabeth's accounts to confirm her claims. It was discovered that she was in great debt (she subsequently absconded to London to escape her creditors, and set up a boarding house). So Thomas withdrew from the relationship. Elizabeth insisted that her claims would have been achieved with the assistance of her mother, or after her mother's death. Besides, Thomas had vowed he would marry her even if she

⁵⁰ BI, *Moor c. Moor*, 1707. His personal response denied the allegations.

⁵¹ BI, *Currer c. Currer*, 1673.

⁵² Elizabeth's two children and servants confirmed her account; Thomas's sister (his housekeeper) and servants denied the contract and consummation.

had not one shilling.⁵³ For Thomas, the benefits he would gain with Elizabeth were far outweighed by the responsibilities he would incur.

Some husbands did not have such a lucky escape. Samuel Finch was frightened to walk the streets after his marriage because people came and craved payment of Elizabeth's debts from him.⁵⁴ When Margaret Colston sued her husband for separation on the grounds of adultery and cruelty, in October 1726, he was unable to appear since he was in gaol for debt in Kingston Upon Hull. John claimed that he had been arrested for debt the previous June at the suit of his wife's brother, which was at Margaret's procurement. Unable to find bail, he went to gaol. Margaret then got her son-in-law to bring an action against him for £40. John declared he had never contracted debts with either of the men, 'and in Case the sums above or any other are due to them Such were Contracted by his said wife'.⁵⁵

Men did overtly abuse their financial obligations during marriage.⁵⁶ For example, Grace Allenson alleged that after her husband left their home in Peaseholme Green, York, he granted a warrant of attorney to confess a judgement to John Gouldbrough for a debt. This meant that the house was taken possession of, by two sergeants of the city of York, in Gouldbrough's name, turning-out Grace. She argued that there was no debt, and that the action was set up by her husband solely for the purpose of forcing her out of their home.⁵⁷ But there is firm evidence that there was a social 'policing' of husbands to prevent their exploiting their superior economic position. They were obviously

⁵³ BI, Trans. C.P.1729/10, *Haswell c. Dodgshon*, 1727. Elizabeth's mother seems to have been unwilling to assist during her lifetime. Intriguingly, Mary Hey, Thomas's servant, deposed that Elizabeth had told her in 1726 that she would not marry Thomas because his father had left his land to Thomas's son. Elizabeth Hey claimed Elizabeth brought the suit simply in order to get money from Thomas.

⁵⁴ DDR *Finch v. Finch*, 1779, letter to Elizabeth dated 9 January 1779.

⁵⁵ BI, *Colston c Colston*, 1726. See also *Currer c Currer*, 1673. Henry Currer had claimed that his wife's portion had been spent fighting suits against him and Jane for debts she had contracted in widowhood.

⁵⁶ One of the reasons behind separate settlement was to protect wives from exploitative husbands. Susan Moller Okin, 'Patriarchy and Married Women's Property in England: Questions on Some Current Views', *Eighteenth-Century Studies*, 17, 2 (1983/4), 125.

⁵⁷ BI, *Allenson c. Allenson*, 1675.

criticised by members of their community. In 1768, James Anderson and his wife placed an advert to stop gossip which was, as James put it, 'to the Disadvantage of my Character'. People were speculating that he had separated from Jane either because he had expected more with her at marriage, or had wasted what she brought him. In response, James explained that when he recently married Jane, a housekeeper, she unfortunately had some 'melancholy Apprehensions about the State of her Soul'. He thought he could help her get better, but she did not improve despite argument from scripture, reason, prayers, tears and advice. James pointed out that Jane's friends would confirm his good intentions and work, and that, having failed, he had given her leave to stay with any of them. Finally, he explained that he had not spent one penny of her substance, and was paying for her keep; 'and if not likely to recover, will deliver every Thing she brought me that she can call hers; and if it please God to recover her, will receive her again with every Degree of Love and Tenderness, if all she has should be spent'. This poignant account was followed by Jane's confirmation of its truth, as well as her sorrow that she had brought distress 'upon a loving and indulgent Husband'.⁵⁸

Not all men were exploitative of their wives' property or possessions. A number believed property to be shared and divisible following marital breakdown. In 1771 in *The Newcastle Courant*, Thomas Forster of Bywell, Northumberland, advertised that his wife had separated from him and taken with her 'such part of the Household Goods as properly belonged to herself'.⁵⁹ In a painfully personal advert, Joseph Fleming of Sunderland explained, in February 1769, that he had married Elizabeth Martland, a widow, in May the previous year. They moved Elizabeth and her furniture into Joseph's house. Subsequently, his wife, her sister, and a servant, were seen by neighbours 'carrying all the Pewter Dishes, Linen, Clock and Things of Value' that Joseph got by his wife. Then, in January, Elizabeth left him and went to London, taking all she could out of his house and leaving him in 'a distressed Condition'. He steadfastly refused to

⁵⁸ *Newcastle Journal*, 4-11 June 1768, p. 2.

⁵⁹ *Newcastle Courant*, 27 April 1771, p. 2.

pay her debts because, 'I never got Six-pence of her Money in my Life', and because she had wronged him of £80. Although it is not clear what line of business he was in, he claimed to have 'transacted Business for six Thousand Subjects, and none of them ever did suffer, or shall, God willing, by me.' He ended renouncing 'all Pretensions to any of her Effects, to have any Thing to do with them, either in receiving or paying for them, for ever, since she has despised me.'⁶⁰

The extent of public disapproval of men who exploited their wives' financial position was useful to women who went public about their problems. For example, when wives presented their account of a malfunctioning marriage in the press, they often prioritised their husbands' inadequate treatment of step-children. So Mary Giles stressed that she paid her husband a competent fortune at marriage and in return he agreed by articles to secure the money left by her first husband to her two children. She detailed that, despite this, he pressed her to destroy these articles and, when she refused, denied her and the children all common necessities.⁶¹

Jane Gomeldon carefully manipulated her husband's financial exploitation when their dispute entered the local press. A bequest was the catalyst for their conflict, four years after their marriage in 1735.⁶² Jane's mother, Isabella Middleton, died in October 1739 and devised most of her estate in trust to Jane for her sole and separate use, stipulating that no part was to be liable or subject to the power, control, debts, or engagements of Francis, or any future husband.⁶³ According to Jane's separation suit for cruelty, begun in October 1742, in response to her husband's restitution suit, Francis violently

⁶⁰ *Newcastle Chronicle*, 4 February 1769, p. 3. He ended that he hoped to earn his bread in future by teaching.

⁶¹ *Newcastle Journal*, 19 May 1744, p. 3; and 2 June 1744, p. 3.

⁶² Francis was a captain lieutenant in his Majesty's Regiment of Foot (He was part of a select circle including George Bowes, Thomas Clavering, Walter Blackett, Henry Grey and Matthew Ridley). Jane was a member of the Middleton family. P. M. Horsley, *Eighteenth Century Newcastle* (Newcastle, 1971), p. 185.

⁶³ The most frequent form of separate settlement was not pre-nuptial, but through a bequest of money or assets for the sole use of a married woman. Hunt, *The Middling Sort*, p. 158.

pressurised her to surrender to him her title to her share of her mother's estate.⁶⁴ Intriguingly, the clash over this inheritance entered the local press through the remarkable series of lengthy and detailed adverts placed by the couple in the summer of 1740. In July, Francis placed an anonymous advertisement accusing evil advisers of persuading his wife to leave him eleven weeks previously. He requested that she return and threatened to publish her name if she did not.

Jane angrily replied in *The Newcastle Courant* the following week. Denying the inference of the initial advert that she had left her husband for a seducer, she immediately set the scene by declaring that Francis's cruel actions forced her to depart in order to preserve her fortune and her life. She ended by enforcing the point that he desired her fortune more than her person, despite being excluded from inter-meddling with it by her mother's will. Francis denied Jane's claims in *The Newcastle Journal* the next week, this time printing his name. He declared that she was unable to prove her accusations, and promised again to receive her with affection. In her next advert Jane emphasised that her account was the truthful version. She reiterated that he only wanted her fortune, which she promised she would preserve from him.⁶⁵ She did just that, making a will in 1748, five years after the abandonment of the cruelty case early in 1743. While describing herself in it as wife of Captain Francis Gomeldon, she left no bequest to him. By this time, she may have lost all her children since none were named, and she bequeathed her estate to such issue that she might have living at her death. If none, her niece and nephew were to get half the estate as long they remained Quakers.⁶⁶

⁶⁴ DDR *Gomeldon c. Gomeldon* 1740; DDR III (25), Court Book, October 1741-1759.

⁶⁵ *Newcastle Journal*, 5 July 1740, p. 3; *Newcastle Courant*, 12 July 1740, p. 3; *Newcastle Journal*, 19 July 1740, p. 3; *Newcastle Courant*, 26 July 1740, p. 3; *Newcastle Journal*, 2 August 1740, p. 3; *Newcastle Journal*, 16 August 1740, p. 3. Francis continued his fight in the ecclesiastical court, as well as at the August Assizes where he indicted John Brown, Jane's attorney, and Eleanor Lyon, for conspiracy and carrying away his wife without his consent.

⁶⁶ At the initiation of the first suit they had two children, and when Francis began his restitution suit in 1740 Jane was pregnant. DPR, 1781, Jane Gomeldon. Various substantial bequests were also made to Eleanor Lyon, her 'esteemed friend'. For the colourful life of Jane after the separation, see Horsley *Eighteenth Century Newcastle*, pp. 184-90. For her obituary see John Sykes (ed.) *Local Records: or Historical Register of Remarkable Events*, (Newcastle, 1865), vol. 1, p. 318.

CHAPTER NINE

'Cannot agree to live together'¹: divorced from the domestic economy

I

Spouses who lived outside the conjugal unit faced numerous difficulties. Contemporaries carefully distinguished between different types of marriage breakdown, namely separation and desertion. Separation was always perceived to be the mutual agreement of a couple to live apart. The terms used to describe it included: 'separate maintenance'; 'separated from'; to 'live separate'; to 'live apart and asunder'; and most commonly, to be 'parted'. They were followed or preceded by the words 'mutual' or 'consent'. In contrast, the terminology for a wife, or a husband, who had left their partner against their will was quite distinct; it stressed that it was a one-sided action. There was some overlap between the epithets applied to each sex. Either could be described as 'absenting', 'leaving' or 'withdrawing' themselves, or 'absconding'. But the terms were usually gendered. Most women were described as 'eloping'.² The remainder of terms, of which 'absenting herself', was most common were, perhaps, less connotative of leaving with another man. The most frequent label for men was 'run-away'. Obviously, these husbands were defined as leaving their responsibilities. The other expressions accentuated this, including 'not taking care of', 'refusing to cohabit' with a wife, or 'turning her away', and of course that a man had left his wife chargeable to the parish.

Living outside of a marital relationship during adulthood was not unremarkable in the period. A proportion of the population simply never married, although this declined from 15% to 7% between the second half of the seventeenth-century and the beginning of the nineteenth.³ Additionally, a harsh demographic regime made widowhood a common experience. Just to take one example, the proportion of widows heading

¹ John Woodhead's description, in his advert, about relations between him and his wife. *The York Courant*, 30 January 1753, p. 3.

² Nearly 60% of elopement adverts.

³ E. A. Wrigley and R. S. Schofield, *The Population History of England, 1541-1871* (London, 1981), p. 265.

households in the period has been estimated variously at between 6% and 14%.⁴ Already a sizeable minority, the overall quantity of 'lone' men and women was swelled by those who lived apart due to a broken marriage. Unfortunately their numbers are notoriously difficult to estimate, especially in uncontentious separations.

Even desertion is not easy to quantify. Record-keeping is often not consistent or detailed enough to identify abandoned wives. For example, a 'dark figure' of deserted women exists in the northern quarter sessions order books. In the Durham order books sixty-five women, usually with children, who came under the settlement laws, were recorded as the wife of a named man, as opposed to a widow or single-woman. But their husband's whereabouts was not explained, as occurred with other married couples.⁵ None of these ambiguous records have been used in the study, even though, when order book entries can be cross-referenced with sessions bundles, it is clear that some of the wives were abandoned. One North Riding order book confirmed the removal of Margaret Ripley, wife of Robert Ripley, and their two children in 1729, but it is only the removal order itself, contained in the sessions bundles, that specified that Robert had left them.⁶ Court records also do not give any indication of what was happening at parish level. For example, the total number of deserted wives who were the subject of a removal order cannot be extrapolated from parish appeals, since parishes that accepted these orders were not recorded at the quarter sessions. Furthermore, wives who petitioned

⁴ Studies include Mary Prior (ed.), *Women in English Society 1500-1800* (London, 1985), p 105; S. J. Wright, 'The Elderly and the Bereaved in Eighteenth-Century Ludlow' in M. Pelling and R. M. Smith (eds.), *Life, Death, and the Elderly, Historical Perspectives* (London, 1991), p 104; Olwen Hufton, 'Women without men: widows and spinsters in Britain and France in the eighteenth century', *Journal of Family History* (1984), 358.

⁵ Entries relating to removal orders were collected if they specifically stated that the husband had run away from his wife and family. The wives of soldiers, sailors or militia-men were only counted if they were unequivocally deserted. There were also several references in the order books (which have not been counted) to women and their children being removed to a parish of settlement, without stating their marital status at all, but not referring to the children as bastards.

⁶ NYCRO QSM/1729, 29 July 1729 MIC 104, QSB/1729, removal order, MIC 129.

magistrates had experienced problems in gaining relief.⁷ Those who received adequate relief from the parish overseer would not appeal, and, therefore, not appear.

Some evidence, however, intimates that marital desertion was relatively common. Unfortunately, the north-eastern parish poor-relief material and the poor law and settlement work done at quarter sessions are not extensive enough to analyse rates of desertion as a proportion of settlement examinations. Keith Snell's work on rural south-east England estimated that the proportion was 5.8% between 1700 and 1880. David Kent found that the rate was 12.31% in the Westminster parish of St Martin-in-the-Fields, between 1750 and 1791.⁸ The words of a magistrate provide circumstantial evidence. Reverend Robert Forby, a Norfolk justice, complained in 1803 about the drudgery of his duties, recording that he would return to dinner with his 'head full of parish rates, surveyor's accounts, vagrants, *runaway husbands*, assaults, petty larcenies, militia lists and substitutes, tax duplicates and distress warrants'.⁹ Finally, other methodologies confirm that total marriage breakdown was not rare. In her parish reconstitution of Colyton, Devon, Pamela Sharpe estimates that 10% of all marriages that occurred between 1725 and 1756 ended in separation.¹⁰

II

What is striking about lone men and women is that most attempted to reconstitute or form some type of functioning household, or family substitute. Indeed only 1% of the population lived on their own in pre-industrial England.¹¹ Naomi Tadmor's work on

⁷ Richard Connors, 'Poor women, the parish and the politics of poverty' in H. Barker, & E. Chalus, (eds.), *Gender in Eighteenth-Century England: Roles, Representations and Responsibilities* (London, 1997), p. 139.

⁸ K. D. M. Snell, *Annals of the Labouring Poor, Social Change and Agrarian England, 1660-1900* (Cambridge, 1985), pp. 359-63; D. A. Kent, "'Gone for a Soldier': Family Breakdown and the Demography of Desertion in a London Parish, 1750-91", *Local Population Studies*, 45 (1990), 27-42.

⁹ Quoted in Thomas Skyrme, *History of the Justices of the Peace, Vol. II, England 1689-1989* (Chichester, 1991), p. 29. My emphasis.

¹⁰ Pamela Sharpe, 'Marital Separation in the Eighteenth and early Nineteenth Centuries', *Local Population Studies*, 45 (1990), 67.

¹¹ Peter Laslett, *Family life and illicit love in earlier generations* (Cambridge, 1977), p. 199.

contemporary understanding of the concept of family demonstrates that the 'household-family' could be relatively flexible, but tended to include a head of household and dependent members. As she points out, this shows that families could exist apart from notions of a conjugal unit. It does, however, emphasise that those who were not married imitated the form of a household based on a married couple.¹² Apart from the economic, emotional and social motives for forming a 'household-family', there is an impression that individuals who chose to live outside a 'normative' or 'approved' substitute household were suspected by the members of their community, even though they were economically able. Ellen Lambe, or Bonny Nell, as she was known, a single woman of New Malton, Yorkshire, was brought before the consistory court at York, in 1694, for being addicted to the company of young men; in particular Joseph Hornby, a married man. The Libel defined her as a 'housekeeper' and immediately stated that she lived alone without any servant, and that no person had ever lived with her except her sister (which was of little help since the sister was a bastard-bearer). It seems that it was her extreme independence that disturbed the parish, to the point that fourteen local men had kick-started the cause by presenting a petition to the churchwardens. Ellen was assertive. Typically, she had publicly threatened to fire the charged pistols that she kept in her bedroom in the face of any person who tried to spy on her by looking in at her window.¹³

Wealthier men who separated, or were left by their wives, were best able to reconstitute a household. They retained their home when their wives eloped or were turned out, and those who separated with a mutual agreement were probably able to afford to support two households - their own and their wives'. Like wealthier widowers and bachelors, they brought in a female servant or relative to take on the role of housekeeper.¹⁴

¹² Naomi Tadmor, 'The Concept of the Household-Family in Eighteenth Century England', *Past & Present*, 151 (1996), 111-140.

¹³ BI, C.P. H/4349, *Office c. Lambe*, 1694.

¹⁴ In Ludlow, for example, three-quarters of the widowers who did not remarry for a decade or more, usually had another woman in their household; variously an unmarried daughter, kinswoman or female servant. Wright, 'The Elderly', p. 121.

Reverend James Robertson, curate of Holy Island, whose wife had lived 'from him at a great Distance' [Alnwick] for several years, employed two maids to care for his children.¹⁵ Surprisingly, however, marital breakdown was a destructive force even for middling-sort men cushioned by relative economic comfort. Some social decline seems to have been inevitable. Husbands frequently claimed that their livelihood was damaged by their wives' actions. In 1705 John Greaves insisted that his trade as a Beverley shopkeeper was bad, 'by reason of his wife's Character of him, her elopement from, and deserting of him'.¹⁶

Some men simply did not try to carry on as before, without a wife.¹⁷ John Carr, the owner of a dye-works in Leeds, with a large house and gardens nearby, married in 1788. In 1795 he employed Henry Johns, a painter of miniature portraits, to paint himself and his wife. Sadly Sarah Carr admired more than Henry's painting skills. As soon as John discovered his wife's infidelity, he dismantled the household. The maids lost their places shortly after Sarah left; John Thomas, Carr's apprentice, who had lived with the Carrs for eight of his nine-year apprenticeship, had to board with John Carr's brother for the final year, his master 'having given up housekeeping on parting from his wife'.¹⁸ John Winks, the master of a brigantine in North Shields, advertised in 1791 that his wife's behaviour had obliged him 'to decline house-keeping'.¹⁹ Separation could be devastating to those of smaller means. A report in 1740 in *The Newcastle Journal* reported on a beggar found hanging in Sherborn Wood, who had recovered because he was promptly cut down. The attempted suicide was linked to his wife leaving him, since the account ended by observing that he had once been a house-painter and had a wife and two children, but did not know where they were, as they had left him many years before.²⁰

¹⁵ DDR, *Office c. Robertson*, 1755.

¹⁶ BI, *Greaves c. Carr*, 1704.

¹⁷ Old men who lacked a spouse showed a greater tendency to live as lodgers and in institutions. Laslett, *Family life*, p. 200.

¹⁸ BI, *Carr c. Carr*, 1800. CP.I 2569, John Thomas's deposition. For the report on Carr's Criminal Conversation action, heard at York Assizes in 1797, see *The York Courant*, 27 March 1797, p. 3.

¹⁹ *Newcastle Courant*, 22 January 1791, p. 1.

²⁰ *Newcastle Journal*, 6 September 1740, p. 2.

Equally problematic, the reputation of men without wives was vulnerable. An elderly widower was prosecuted for sleeping with his maid in a cause promoted by the chapel warden of Lower Peever in Chester, in 1664. Thomas Dean claimed that his maid stayed with him because of his illness. Until his incapacity, he had evidently tried to avoid rumour. The Kinsey family deposed that about five years previously Dean and his children had lived in the other end of the house to them. Dean's maid was sent to sleep with the Kinsey daughters because 'hee would not give occasion to people to talke of them'.²¹ Separated men ran the same risks. The family reconstitution of Reverend Robertson of Holy Island comes to light because, in 1755, he was presented at Durham Consistory Court for adultery with one of his maids. Elizabeth Hudson was employed by him at Michaelmas 1753, became pregnant, and fathered the child on him; an accusation he rejected.²²

For many lone people, living with family or family support was one way to negotiate a society that favoured the 'household-family' or household based on the conjugal unit.²³ Olwen Hufton shows that middling-sort and elite families routinely assisted women without husbands. Any financial outlay remained within the family; besides, the women 'paid' for their keep by providing caring services.²⁴ Familial support was certainly a vital life-line for separated women. Like Elizabeth Surtees of Ryton who went to her parents in 1744, wives escaped to their relations when their marriage became unbearable.²⁵ They lived with relatives as an intermediate step between marriage and a more

²¹ BI, Trans. C.P.1665/4, *Office c. Dean*, 1665.

²² DDR, *Office c. Robertson*, 1755.

²³ Only 11% of the widowed were solitary. Twenty-three percent lived in a household headed by offspring, other kin, or occasionally other persons, while 65% headed a household which mostly contained unmarried offspring, or, more rarely, married offspring or lodgers. Laslett, *Family life*, pp. 198-9

²⁴ Hufton, 'Women without men', p. 368.

²⁵ BI, *Surtees c. Surtees*, 1745. See also BI, *Rogers c. Rogers*, 1793, Betty Rogers sought refuge with her father at Acomb; BI, *Currer c. Currer*, 1673, Jane fled to her son. For similar nineteenth-century instances see Marjorie Nevill, 'Women and Marriage Breakdown in England, 1832-1857' (University of Essex, PhD Thesis, 1989), pp. 209-10.

independent lifestyle. Dorothea Wentworth stayed with her sister near York for a year, from 1749, following an agreed private separation. She then lodged in the city of York and in Knaresbrough.²⁶ Others lived permanently with their family following the death of their marriage. Catherine Ettrick escaped from her husband's tyrannical rule to her father's house in Durham in 1765; she was still there when she died in 1794.²⁷

Family support was not restricted to the wealthier social ranks.²⁸ The parents of Grace Featherstone, a miner's wife, of Stanhope, consistently supported her. Grace sued Ralph for restitution in 1776. Each denied leaving the other, but what is clear is that she lived with her parents, that they were involved in the negotiations for her return to Ralph, and, when that failed, her maintenance.²⁹ Even quite distant relatives would assist separated women. In 1788, at the age of twenty-one, Sarah Pattison of Berwick upon Tweed entered her inheritance, which allowed her to launch a suit for annulment against John Gray, a wool comber, pleading her minority. The marriage had gone wrong earlier, and Mary Shell, Sarah's father's cousin, had stepped in to assist. In her response to the interrogatories of John (which unfortunately do not survive), Mary Shell replied that in July 1787, 'the last time' that Sarah had eloped from the defendant, she paid her a small weekly allowance for her maintenance. This awarded Sarah the freedom to live apart from John until she came into possession of her money.

²⁶ BI, *Wentworth c. Wentworth*, 1756. For other examples, BI, *Finch c. Finch*, 1779. Elizabeth Finch stayed with her cousin in Durham City until finding lodgings; BI, *Greenwood c. Greenwood*, 1796, Mary Greenwood was sent to her brother after her affair was discovered. She stayed there for a month until she eloped with her lover.

²⁷ BI, *Ettrick c. Ettrick*, 1765. Also J. W. Summers, *The History and Antiquities of Sunderland, Bishopwearmouth, Bishopwearmouth Panns, Burdon, Ford, Ryhope, Silksworth, Tunstall, Monkwearmouth, Monkwearmouth Shore, Fulwell, Hylton, and Southwick* (Sunderland, 1858), vol. 1, p. 186.

²⁸ Studies of poor relief, both supportive and critical, emphasise the important role of familial support. Tim Wales, 'Poverty, poor relief and the life-cycle: some evidence from seventeenth-century Norfolk' in R. M. Smith (ed.), *Land, Kinship, and Life-Cycle* (Cambridge,), pp. 383-4; Steve King, 'Reconstructing lives: the poor, the Poor Law and welfare in Calverley, 1650-1820', *Social History*, 22, 3 (1997), 336.

²⁹ DDR, *Featherstone c. Featherstone*, 1776. An out-of-court document reveals that Ralph alleged that Grace was mentally ill. He therefore wanted the return of his child and offered £4 a year towards Grace's maintenance. Grace and her parents refused either to accept the money or to return his child. Eventually compromise was reached and the cause was dismissed. Ralph clearly was a decent man. In 1797 he left £280 to the daughter, now a married woman, and £6 a year to Grace. DPR, 1798, Ralph Featherstone.

III

When men abandoned their family, they were not necessarily abandoning the institution of family life itself. Direct evidence of men's reasons for leaving is rare.³⁰ The mission of local authorities was to ensure that men returned to their responsibilities, so the language used in the documents they produced prioritised the senselessness of the act of abandonment. The testimony of abandoned wives, usually in petitions to magistrates, was moulded to present them as the victim of a motiveless husband. In print, the actions of run-away men were reviled in melodramatic stereotypes. *The Newcastle Gazette* reported that a woman had hanged herself in front of her two year-old child, in Spital Fields, because her husband, a weaver, had left her without any prospect of subsistence.³¹ Consequently, the image that historians have bought into is that of poor families split by heartless, callous husbands. Men, the aggressors, left behind them starving wives, the victims, and often their pitiful children.

This harsh historical snapshot is not quite the full picture. Some men did run away from their responsibilities, but their act was often less wilful and more desperate than contemporary representations. They left their families because they could not cope with a specific situation, such as the inability to live with a particular woman, or to deal with economic problems brought about by temporary, or life-cycle crisis, and poverty. Recognising this humanises the deserting husband, casting him in a more sympathetic, albeit rather ineffectual, light. For example, husbands often deserted when their children were small and at their most draining on the domestic economy, especially since wives were restricted to caring for them instead of contributing to the domestic income.³² Nearly a quarter of the north-eastern couples who broke up due to the husbands'

³⁰ An analysis of 221 bigamy prosecutions between 1830 and 1900 found that when men justified their desertion they blamed their wives' sexual misconduct, bad temper, or money disputes. For female bigamists it was either the husband's cruelty or failure to provide. Ginger Frost, 'Bigamy and Cohabitation in Victorian England', *Journal of Family History*, 22, 3 (1997), 288-90.

³¹ *The Newcastle Gazette*, 23 October 1751, p. 1.

³² Snell, *Annals*, p. 363; Kent, "'Gone for a Soldier'", pp. 33-6.

desertion were childless, a few because children had reached adulthood or had died.³³ The rest had children. In twenty-four cases it was simply stated that the husband had abandoned his family or children without specifying their number. Where the figure was stated, over 9% had four children or more, 13% had three children, 20% two children, and 15% one child. In practically all the cases the children were young, often infants described as 'nurse' children.³⁴

Other life-cycle problems broke marriages. Illness provided an opportunity to escape. Patrick Liddle of Newcastle made his bid for freedom while his wife was 'lying sick in a fever'.³⁵ Isolation from family, friends and parish officials also facilitated desertion. The considerable number of parish appeals in the northern courts of quarter sessions makes it plausible that desertion often occurred away from the couple's parish of settlement. In Snell's opinion, a greater distance from the settlement parish meant that there was less behavioural regulation. Similarly, Kent concludes that the anonymity of London, with its substantial migration, cut-off families from the constraining intervention of relatives and the attention of officials.³⁶ Furthermore, limited work opportunities caused marital problems and many army and navy recruits were husbands trying to escape economic difficulties.³⁷ In 1780 Ralph Mather wrote that families were pushed into hardship because of technological changes that restricted work opportunities, resulting in over 4000 poor men enlisting as soldiers or sailors, 'to escape the cries of their starving wives and children'.³⁸

³³ Over 43% of couples who split up in Westminster were childless. Although not straining a marriage economically, this was a factor in making it easier to walk-away from. Kent, "Gone for a Soldier", p. 34.

³⁴ The number of children could be reconstructed in 138 of the 144 families. There were 122 unambiguous references to desertion in the quarter sessions records: NYCRO QSB/1685-1800, QSM/1703-1800, DC/SCB VI 2/1/1/1-4 and DC/RMB III 3/1/3; DRO Q/S/OB 5-16; TWAS QS/NC/1/2-8; NRO QSB 1-87 and QSO 1-15. In addition, twenty-two instances were collected from parish material: DRO EP/BC/7/16-61, EP/Du SO/112/2/1-128, EP/Stai 7/89-91, EP/Sto 56 Vagrancy Certificates 1736-66, D/X 666/82; NRO EP. 33/105-6 Removal Orders, EP. 86/118 Overseers' Account Book, 1787-94; NYCRO PR/PI 5/5/93, PR/STC 5/1.

³⁵ NRO QSB 69, fols 22-3.

³⁶ Snell, *Annals*, p. 363; Kent, "Gone for a Soldier", pp. 38, 40.

³⁷ Sharpe, 'Marital Separation', p. 67; Kent, "Gone for a Soldier", p. 29.

³⁸ Quoted in Anna Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (London, 1995), p. 20.

Desertion, identified as a practice of wage labourers, is usually described by historians as a relatively simple process. After all, these couples had no property, either in terms of real or personal estate, or business stock or goods to organise. So, men simply put as much distance between them and their dependants as they could.³⁹ In reality, however, men who deserted, particularly poorer men, had much to lose. By absconding they became cultural and social outcasts. In their refusal to provide for their wife, they rejected the concept of a good husband and of responsible manhood. In 'divorcing' themselves from their wife, they divorced themselves from the support system of the poor laws. They may also have cut themselves off from family support, since they were theoretically unable to return to their parish of settlement, perhaps also that of their relatives. For, these parish-pariahs became punishable under the vagrancy acts. Any future illness, incapacity, or old age, (at least one of which was likely to occur) would leave them unable to turn confidently to the parish for help.

By the mid eighteenth-century there were three different 'grades' of vagrant.⁴⁰ The 1713 Vagrancy Act's definition of 'rogues and vagabonds' included those who left their wives and children to the parish.⁴¹ Vagrancy laws were no idle threat. Northumberland's petty constables were required in 1719 to make a general search to seize and apprehend all 'rogues and vagabonds', including 'All Persons Able in body who run away and leave their Wives or Children to the Parish', excepting soldiers and mariners.⁴² Even men who only threatened to run away were categorised as 'idle and disorderly' persons by the Vagrant Act of 1744. Those who had a trade or craft were still classified as vagrants if they refused to support their family. Matthew Carver, a cordwainer from Leeds, was

³⁹ *Divorce*, p. 141.

⁴⁰ 'idle and disorderly', 'rogues and vagabonds', and 'incorrigible rogues'.

⁴¹ George Nicholls, *A History of the English Poor Law* (1898), vol. I, p. 378.

⁴² NRO QSB 50, fol. 39.

committed to Thirsk house of correction in March 1776 as a rogue and vagabond for leaving his wife and three children at Northallerton (he claimed she was a thief).⁴³

Twenty-seven percent of the deserting husbands in this study were classed as vagrants and committed to the house of correction. There the 'idle and disorderly' got hard labour for up to one month. A 'rogue and vagabond' could be either publicly whipped or incarcerated until the next general quarter sessions. If he was thereafter judged to be a 'rogue and vagabond' by the court, he could be ordered to remain in the house of correction at hard labour for up to six months.⁴⁴ Following punishments, vagrants were returned to their place of settlement.⁴⁵ No doubt they were all expected either to return to their families, or to support them thereafter. Parishes apparently did not care which, as long as the family was not chargeable. William Carlisle was put in Thirsk house of correction in April 1756 for refusing to live with his wife *or* not allowing her a sufficient maintenance to live upon.⁴⁶

IV

This range of legal, social and economic handicaps may, ironically, have encouraged deserting men to form a new relationship.⁴⁷ Since marriage breakdown made people financially precarious, another relationship, in effect another economic partnership, was beneficial.⁴⁸ Although remarriage was not a legally available strategy for separated spouses to reform a household, bigamy and cohabitation occurred. A number of

⁴³ NYCRO QSB/1776, films 001598; 001711; 001712.

⁴⁴ Nicholls, *English Poor Law*, vol. II, pp. 34-6.

⁴⁵ Two of the northern men were sent to the regulating captain to enter the forces.

⁴⁶ NYCRO QSB/1756, film 8538, Calendar of Prisoners, July 1756.

⁴⁷ The number of such unions was likely to be common but difficult to estimate. The trials of bigamists are not indicative of the numbers of bigamies.

⁴⁸ For re-marriage as both a strategy to avoid poverty and for its decline over the period see respectively, Wright, 'The Elderly', p. 106; Jeremy Boulton, 'London widowhood revisited: the decline of female remarriage in the seventeenth and early eighteenth centuries', *Continuity and Change*, 5, 3 (1990), 323-55.

deserting men went on to remarry.⁴⁹ William Scott of Bellingham left his wife in March 1724, and she was informed in 1725 that he had since married the widow Jane Forster.⁵⁰ Bigamy was not restricted to deserting men. For a separated woman, another relationship offered economic security, and perhaps acceptance into the credit system, as much as emotional satisfaction.⁵¹ A number of eloping women travelled or lived with their lover, passing themselves off as man and wife. For example, John Ferman claimed that his wife had an affair with Isaac Dixon, a spirit merchant of Newcastle. In 1796 she eloped and lived with Isaac at Ferryhill and Hartlepool, where they pretended to be married.⁵²

In fact, bigamy was viewed somewhat ambiguously. In law it was a felony punishable by execution. Yet the act did not extend to those whose spouses remained constantly overseas, or absent, for seven years or more, nor to 'any person that shall be at the time of such marriage divorced by any sentence in the ecclesiastical court', or whose marriage was declared null and void.⁵³ Furthermore, during the eighteenth-century, the availability and use of benefit of the clergy mitigated punishment.⁵⁴ Moreover communities often tolerated bigamy. In 1707, Denby Hartwell, a soldier in the second regiment of the Foot Guards, married Margaret Smith. They lived in Flanders until Margaret returned to London to run her brandy shop. Denby also returned because he married another wife in 1710. Margaret Smith was still alive ten years later when Christiana Hartwell sought an annulment from Denby. All the parties had been aware of

⁴⁹ Work and cottages were allocated to married rather than single men, perhaps an incentive to remarry. Pamela Sharpe, 'Bigamy among the Labouring Poor in Essex, 1754-1857', *The Local Historian*, 24, 3 (1994), 144.

⁵⁰ This may have been part of a prosecution against her husband for bigamy. NRO QSB 66, fol. 41.

⁵¹ *Divorce*, p. 142.

⁵² DDR *Ferman c. Ferman*, 1801. See also *Cunliffe c. Cunliffe*, 1701; BI, *Barttelot c. Barttelot*, 1793.

⁵³ Richard Burn, *The Justice of the Peace and Parish Officer* (4 vols. London, 1785), vol. 3, pp. 312-3. Nonetheless, church courts still counted such bigamous unions as null and void.

⁵⁴ *Divorce*, p. 143. An examination of cases of bigamy in Essex between 1754 and 1857 notes that penalties were not severe for bigamists who were caught. Indeed, overseers occasionally validated an illegal marriage because this saved them from providing a woman with financial support. P. Sharpe, 'Bigamy among the Labouring Poor', pp. 140-3. For nominal punishments in the nineteenth-century see Frost, 'Bigamy', pp. 298-302.

each other. The deponents knew both wives; Christiana's aunt and mother were acquainted with Margaret and knew that she was still alive. Whatever motivated Christiana to bring the suit, it was not the sudden discovery of her status.⁵⁵

Ginger Frost's penetrating study of nineteenth-century bigamy reveals that it was socially acceptable as long as several criteria were satisfied, all of which were applicable to some degree in the previous century. Firstly, bigamists needed reasonable justification for leaving their spouse. As well as adultery and cruelty, this included sexual dysfunction. Elizabeth Agar remarried after she separated from her husband in 1768. She admitted her bigamy but justified it by explaining, as she told a servant of her new household, that she and her first husband 'were never betwixt Sheets together and She did not know whether he was Man or Woman'.⁵⁶ John Taylor married his first wife in 1781 but separated because she would not receive his embraces. His second marriage, in 1790, landed him on trial at the Old Bailey in 1794. Significantly, there was sympathy for him because, although he was found guilty, he was only sentenced to a fortnight's confinement and then discharged after paying one shilling.⁵⁷

Long-term separation also apparently justified bigamous relationships, particularly in time of war. *The Newcastle Courant* reported in 1763 that a number of bigamous incidents had occurred because husbands had gone into the navy or army, been assumed dead, and their wives had remarried. Even where children had been born to the second husband, all situations were 'amicably settled'.⁵⁸ Frustratingly, the newspaper does not explain exactly what these settlements were. Arrangements could be surprisingly flexible. Sometimes the bigamous wife returned to her first husband. One wife had

⁵⁵ BI, *Hartwell c. Hartwell*, 1720. See also BI, Trans. C.P.1721/3, *office case promoted by Gallimore c. Avern and Ellison*, 1721.

⁵⁶ Elizabeth rightly understood that this dissolved the marriage, although she failed to have it formally annulled. BI, *Agar c. Agar*, 1773.

⁵⁷ *York Herald*, 22 November 1794, p. 2. The second wife and her relations knew that John was already married, in fact both wives were great friends.

⁵⁸ *Newcastle Courant*, 29 January 1763, p. 2.

remarried, assuming that her sailor husband was dead. When he returned, 'frankly and generously overlooking all that's past, he took her to his arms ... and 'tis thought they'll now be a happy couple'.⁵⁹

The second criterion for toleration was that both families had to be supported by the bigamous spouse.⁶⁰ Of course, failure to maintain a first wife sometimes prompted her to prosecute her bigamous spouse.⁶¹ About a year after their marriage, and just before the birth of their twins, John Scott left his wife, Alice, at Gateshead, claiming he was going to the country to get work to support her. But it was thirteen years before she brought her husband's bigamy to the attention of the quarter sessions at Morpeth in 1714. Alice simply stated in her petition that he had since married another women, with whom he had three children, and requested that the magistrates do her justice 'in this unlawfull and illegal Way of Matrimony'. Her motivation is not evident, but probably having tracked him down, she wanted him forced to maintain her.⁶²

Finally, bigamy was treated more leniently if the second spouse knew the situation and was not duped.⁶³ Men who conned second wives were particularly condemned. In 1738, *The York Courant*, in a report about a man committed to prison for marrying bigamously, furiously declaimed: 'Crimes of this Nature, howsoever frequently committed, and to the Scandal of our Country suffered to pass with Impunity, are of the blackest Nature'. To the author, the crime was evil because it ruined the parties, the peace of families; crucially, the second wife, who previously had a chance of a good

⁵⁹ *Newcastle Chronicle*, 11 August 1764, p. 2.

⁶⁰ Frost, 'Bigamy', p. 291. Also see Gerhard O. W. Mueller, 'Inquiry into the State of a Divorceless Society: Domestic Relations Law and Morals in England from 1660 to 1857', *University of Pittsburgh Law Review*, 18 (1959), 572. For disapproval, *Newcastle Courant*, 15-22 June 1751, p. 2; *ibid.*, 15 January 1791, p. 4.

⁶¹ In nineteenth-century England the first or second spouse brought the majority of prosecutions. Frost, 'Bigamy', p. 287.

⁶² NRO QSB 39, fol. 74.

⁶³ Frost, 'Bigamy', pp. 286; 299.

marriage, 'is totally deprived of all Hopes of Happiness in this World, and doom'd to a Life worse than Death itself'.⁶⁴

Even so, there is no doubt that bigamy carried social stigma in the eighteenth-century. It was one of the labels used to attack reputation and credit. A defendant excepted against Richard Walker, a deponent in an office cause in 1700, because he had no credit, was beggarly, a liar, a profaner and reputedly a bigamist.⁶⁵ There may also have been less toleration of higher social ranks practising bigamy, perhaps because they had the means to afford a formal or informal separation.⁶⁶ A newspaper report that a bigamist had been charged and taken into custody at Southwark, to be tried at the next assizes, stressed that he was a young gentleman of fortune.⁶⁷ The bigamous relationship between Thomas Suttell, a wine merchant, and Elizabeth Agar caused them to move frequently in the city of York, largely because their relationship created animosities between Thomas and his friends.⁶⁸

As Ginger Frost remarks, bigamous unions 'were strong evidence of the resilience of people's attachment to matrimony in all classes'.⁶⁹ Perhaps the most convincing evidence for this is that some men in cohabiting or bigamous situations respected their responsibilities so much that they did not know which relationship took precedence. George Shafto left his wife, Hester, in 1789, after four years of marriage, and from 1791 lived as the husband of Anna Powell who kept a milliner's shop near Leicester Square. From 1792 to 1797 they were put in the Fleet and King's Bench Prisons for debt. On liberation he got a lieutenancy in the Second Northumberland Regiment of Militia and

⁶⁴ *York Courant*, 6 June 1738, p. 3. See also *Newcastle Courant*, 10-17 October 1747, p. 4. Here sympathy lay with the second wife who unwittingly became friends with the first, and was then left desolate with her children when the felony was discovered.

⁶⁵ BI, EX. C.P. 1/141, *Office c. Slainhead*, 1700.

⁶⁶ Higher ranking men were sometimes given longer sentences at trial because they were setting a bad example. Frost, 'Bigamy', p. 299.

⁶⁷ *Newcastle Courant*, 21 February 1767, p. 2.

⁶⁸ BI, *Agar c. Agar*, 1773.

⁶⁹ Frost, 'Bigamy', p. 291.

returned to Alnwick to live with Hester again. They cohabited for a short time at Newcastle and Sunderland, until George explained to Hester that he was under obligations to Anna and had sent for her. George lived with Anna in Sunderland from late 1798 until 1799, when he obtained another lieutenancy in a different regiment and moved with her to Liverpool. At this point Hester sued him for restitution.⁷⁰

Another confused man was Patrick Liddle who married a Scottish woman, Elizabeth Finley, in Holland in 1711. He lived with her for ten years and then left her in Scotland and went to Newcastle. There for about three years, he met Jane, married her in Houghton-le-Spring in September 1723, and lived with her at Gateshead for enough time to have two children. Thereafter, he returned to Elizabeth, staying with her for a few months in Northumberland until Jane, 'his second Wife', found him. So he left Elizabeth and returned with Jane to Newcastle where he stayed for about ten months during 1725. Just after Christmas, in January 1726, Patrick once again returned to Elizabeth at Milfield in Northumberland. Jane turned-up in May, but this time complained about him to the justice of the peace. Patrick's departure from Jane may have followed the death of their two children; if so, he might have seen this as freeing him of obligation to her. Nevertheless, his yo-yoing between the two women shows he could not make up his mind about which relationship took priority.⁷¹

V

Whatever their relationship arrangements, work was probably the common experience of refugees from a failed marriage. Somewhat ironically it provided the opportunities for husbands to escape. Run-away husbands left when they had an economic alternative. James MacCoun had 'run away ... and enlisted himself for a soldier', leaving his wife

⁷⁰ BI, *Shafto c. Shafto*, 1797.

⁷¹ NRO QSB 69, fols 22-3. In her complaint, Jane did not mention the first departure and return of Patrick, and had obviously known of his first marriage for longer than she first claimed. Interestingly, her primary complaint was that Patrick's usage tended 'to her utter ruine for that she raised some money to buy him tools to work with as a Tinker and which he now makes use of'. Perhaps she got tired of him because he had taken her money.

and children on the parish.⁷² Alternatively, men needed to have a substantial amount of money with them to tide them over until they obtained other work. Snell's and Kent's comparative studies of the seasonality of desertion reveal an interesting correlation. Rural men absconded in September once they reached their peak of earnings after harvest, while the men in St. Martin's left most often in high summer and autumn, probably in the hope of getting harvest work in the countryside.⁷³ By the early nineteenth-century this was practically an institution. A parish officer responding to a newspaper advertisement seeking the whereabouts of a runaway husband, stated that he was in Rochford, which he described as a 'remote place where A many of our Essex chaps especially Runaways fly too [sic] when they desert their families'. They clearly headed there for the farming work.⁷⁴ It is not easy to trace husbands any further, in terms of their working lives. No doubt they moved to where they were unknown, took on what work they could and hoped for the best.

The abandoned partners of such men relied upon work to support themselves for as long as possible. The work available to women without husbands varied according to social status. More comfortable middling-sort women probably took in lodgers, or rented out property. This followed the pattern of other lone women; for example, Elizabeth Myres, the widow of an Alderman of Durham City, who had a married couple as her tenants.⁷⁵ Most lone women who tried to earn a living, however, did so from 'female' jobs such as charring, nursing, domestic service, and clothes-making which formed the lowest-paid, lowest-skilled parts of the economy.⁷⁶ As a result, lone women supporting children found their wages inadequate.⁷⁷ Lois Miller included a petition, which dated from her

⁷² NYCRO QSB/1743, removal order, 22 February, 1742, MIC 133.

⁷³ Snell, *Annals*, p. 361; Kent, "'Gone for a Soldier'", p. 39

⁷⁴ Pamela Sharpe, 'The bowels of compation': A Labouring Family and the Law, c. 1790-1834' in Tim Hitchcock, Peter King and Pamela Sharpe (eds.), *Chronicling Poverty: The Voices and Strategies of the English Poor, 1640-1840* (London, 1997), p. 97.

⁷⁵ BI, Trans. C.P.1674/3, *Office c. Myres*, 1674.

⁷⁶ For example, Olwen Hufton, *The Prospect Before Her: A History of Women in Western Europe, 1500-1800* (London, 1995), p. 56-7.

⁷⁷ Peter Earle, 'The female labour market in London in the late seventeenth and early eighteenth centuries', *Economic History Review*, 2nd ser., 42, 3 (1989), 342-3.

husband's desertion, in the letter to her proctor instructing him about her restitution suit at Durham consistory court. It concluded that only the charity of her good neighbours prevented her from starving, even '[t]ho I endeavour to the utmost I possibly can with my hands, being never brought up with hard labour'.⁷⁸ Such women were forced onto the parish in order to supplement their living standard.⁷⁹

Nonetheless, deserted wives' petitions seeking poor relief stressed that they had worked as long as possible.⁸⁰ In 1726, Mary White firmly pointed out that she had used her utmost endeavours by hard-labour to sustain herself and her children for the sixteen years since her husband left her.⁸¹ Most women insisted that they had supported themselves after their husband left, until ill-health or old age. Elizabeth Ferguson's petition to the Hexham bench in 1719 asked for an allowance for herself and her three children because she had been sick for nine months of an ague, but she made it clear that her husband had run away four years previously.⁸² Dorothy Browne, in 1698, claimed that she could no longer work because of her age and infirmities, and Jane Milburn, in 1718, after stating that her husband was worth £40 per annum, stressed she could not work because she was eighty-two years-old.⁸³

This emphasis on work demonstrates contemporary expectations that women were able and should work to support themselves.⁸⁴ Certainly, deserted women who did so were admired. The 'extraordinary Affair' reported in 1752 in the *Newcastle Journal* reflected

⁷⁸ DDR, *Miller c. Miller*, 1743.

⁷⁹ It is difficult to establish an average of how long deserted women strove to support themselves and their children before turning to poor relief. Petitions did not need to give exact dates, they simply aimed to establish that the women had endeavoured to support themselves.

⁸⁰ For a methodology for using paupers' petitions and letters see Thomas Sokoll, 'Old Age in Poverty: The Record of Essex Pauper Letters, 1780-1834' in Hitchcock *et al.*, *Chronicling*, pp. 127-133.

⁸¹ NRO QSB 67, fol. 18.

⁸² NRO QSB 51, fol. 83. Similarly Mary Amble showed that although her husband had left some time before, she had managed to look after her family until her health problems. NRO QSB 61, Easter Sessions, Morpeth, 1724, fol. 48.

⁸³ NRO QSB 10, fol. 73; QSB 48, fol. 38.

⁸⁴ It has been stated that the labouring poor held 'a deeply rooted positive attitude to work and a firm belief in its social function'. Sokoll, 'Old Age in Poverty' pp. 144-5.

this view. A 'bad Husband' who had left his wife and lived with another woman for four years, was sitting on his cart, drinking ale, outside a London ale-house when he suddenly spied his deserted wife ironing in a house opposite. In response to his swearing and horrid oaths that he would murder her that night, the people around him demanded him to let her alone as she would not trouble him 'and worked very honestly for her Living'. The report triumphantly concluded that his continual blaspheming startled his horse, which threw him off the cart and under its wheel, where he was crushed to death.⁸⁵

But poor relief was not more than a supplement for most women.⁸⁶ The sums provided were usually less than the most basic subsistence and not intended to be a living wage.⁸⁷ Quarter Sessions orders to Northumberland parishes to support deserted women ranged between 1s. in 1721, 1s. 6d. in 1695 and 1714, and 2s. 6d. in 1713.⁸⁸ An unusually descriptive overseers' account book for the parish of St. Nicholas in Newcastle, from 1786 to 1794, shows that the support given to deserted families varied according to the number of children. Jane Scott who had seven children was given approximately 4s. a week in 1789, while Mary Chipchase, who had one son, was paid 2s. a week in 1790.⁸⁹ Of course, children contributed to family income. In 1726, Elizabeth Grant was assisted by her daughter who could work for her own meat, and Elizabeth just found her clothes.⁹⁰ Thus when children were able to help, the family's parish dole was lowered since their need was no longer as great. Similarly, Jane Liddell's 8d. weekly allowance

⁸⁵ *Newcastle Journal*, 23-30 May 1752, p. 1.

⁸⁶ Two forms of relief were available, a weekly pension and short-term help for assistance during illness or unemployment.

⁸⁷ For contrasting views about the value of poor relief, see Peter Rushton, 'The Poor Law, the parish and the community in north-east England, 1660-1800', *Northern History*, 25 (1989); King, 'Reconstructing lives'.

⁸⁸ Work on seventeenth-century Norfolk parish accounts and quarter sessions records shows that in 1706 some paupers were paid 6d. a week, and others 1s. a week. Wales 'Poverty, poor relief', p. 355.

⁸⁹ TWAS, EP.86/118.

⁹⁰ NRO QSB 69, fol. 21.

was halted by Benwell in 1738, because her children were grown-up and she could maintain herself.⁹¹

Deserted wives faced a precarious future. Various studies reveal that the majority of those defined as poor were women, usually without a spouse.⁹² It has been observed that litigation over settlement laws usually had women at their heart, either married or widowed or abandoned women with children.⁹³ This was so in the northern quarter sessions. Nearly 42% of the 122 deserted wives come to light through the settlement work done by the courts.⁹⁴ The Act of Settlement of 1662 and later amendments obliged an individual's parish of settlement to support him/her.⁹⁵ Any person who was likely to become chargeable to the poor rates could be forced to return to their parish of settlement, often setting-off disputes between parishes, which were entitled to appeal against removal orders. Additionally, several of those categorised as vagrants in the northern quarter sessions were abandoned wives. Isabel Macintosh was taken-up as a vagabond with her four children in Yorkshire in 1768. Originally from Dalkeith in Scotland, her husband, a tailor, 'lately left her pretending he was going to work in Yorkshire'. Not hearing from him, she set out from Scotland to seek him. She arrived in Yarm where she could not find him, and she and her children were forced to beg because she had run out of money. Isabel was conveyed back to Dalkeith.⁹⁶

Nonetheless, it is simplistic to see deserted wives who sought relief only as victims. Elizabeth Grant was deserted in 1723. An order, in 1725, granted her 6d. a week, to assist in supporting her and her three younger children. The churchwardens and

⁹¹ NRO QSO 7, pp. 344; 352.

⁹² For the eighteenth-century, see Connors, 'Poor women', pp. 136-8; for seventeenth-century Norfolk parishes where women formed around 60% of parish paupers see Wales, 'Poverty, poor relief', p. 380.

⁹³ Connors, 'Poor women', p. 136.

⁹⁴ Another twenty-two broken families were found in parish poor relief material.

⁹⁵ After 1692, settlement was earned by birthplace, renting property worth £10 or more a year, paying local rates, being bound as apprentice or hired as servant and working for a year, or derivatively from a parent or husband.

⁹⁶ NYCRO QSB/1768, film 002322, poor law examination, 24 May 1768; film 002532, removal order.

overseers of Acomb (Northumberland) paid it for some time, but then stopped, and 'though they saw her ready to starve they w[ou]ld give no ear to her miserable Complaints daily made'. Consequently she directed her claims to the quarter sessions bench.⁹⁷ The women formulated strategic petitions in the same way as other petitioners.⁹⁸ Pleas usually had a deferential opening and closing, like Dorothy Browne's petition in 1698, which offered the bench ceaseless prayers for their health and eternal happiness if they ordered her husband to support her.⁹⁹ Like other petitioners, they set out the distressing elements of their situation, stressing issues such as previous rate-paying, age, and infirmity. Deserted wives understood their right to assistance.¹⁰⁰ Mary White from Allendale clearly felt that the payment of poor rates was an insurance scheme. Claiming a pension in 1726, she emphasised that her husband had lived at Howsley for several years, farmed at £5 or £6 per annum, paid all neighbourhood 'assesses' and served as constable.¹⁰¹ Deserted women also applied strategies that did not work for other petitioners. Catherine Pinkering used notions about responsible manhood in her information to the Christmas Sessions at Morpeth, held in January 1697/8. She emphasised that when John married her the previous July he had promised to take, care and provide for her, but had deserted her after getting her with child and refused to afford her any relief.¹⁰²

⁹⁷ NRO QSB 69, petition of Elizabeth Grant, 14 July 1726, fol. 21. Paupers who felt that the overseer was unjust to them, by supplying inadequate relief or refusing their plea, could appeal to a justice or quarter sessions bench. By appealing to the justices, women challenged their local parish authority, and frequently had the justice side with them. Connors, 'Poor women', p. 144.

⁹⁸ Historians of pauper-experience note a range of styles of requests, sometimes deferential, but often self-confident and demanding. Sokoll, 'Old Age', p. 140; Sharpe, 'A Labouring Family and the Law', p. 103; Jeremy Boulton, 'Going on the Parish: The Parish Pension and its Meaning in the London Suburbs, 1640-1724' in Hitchcock *et al.*, *Chronicling*, pp. 27-8.

⁹⁹ NRO QSB 10, fol. 73.

¹⁰⁰ For an explanation of paupers' concept that they were due relief, see Hitchcock *et al.*, *Chronicling*, p. 5-11.

¹⁰¹ NRO QSB 69, fol. 18.

¹⁰² NRO QSB 10, fol. 51.

VI

Alimony was not the solution to the problems faced by separated women for whom neither work nor poor relief could be relied upon as a sole income. It was common knowledge that wives were due alimony if turned out by their spouse for no reason. As John Greaves, a shop owner and former mayor of Beverley, informed his wife on turning her out, if she came back he would turn her out again 'and bid her take what the Law would give her'.¹⁰³ Of course, women were not entitled to be maintained in separation if they were adulterous.¹⁰⁴ But even those women who fulfilled all the criteria for receiving alimony, or the law of agency, frequently faced difficulties.¹⁰⁵ Obviously, in the case of deserted wives, most husbands were just not around to provide. Furthermore, alimony payments were often low. It is difficult to establish rates since many couples agreed private settlements. For example, Francis Spence had paid his wife and his child £10 a year while they were separated between 1763 and 1772.¹⁰⁶ The sums of maintenance set by the courts of quarter sessions varied according to the occupational and social status of husbands, the number of children, and the wives' ability to work. For example, in Northumberland, surviving orders include 2s. a week for a wife and child in 1698, 9d. per week for a wife in 1718, 7s. 6d. weekly for a wife in 1722 and 2s. 6d. in 1722 for a pregnant wife and three children.

¹⁰³ BI, *Greaves c. Greaves*, 1704.

¹⁰⁴ Adultery also might have damaged wives' right to dower. A separation from bed and board left the wife entitled to her dower, but her elopement removed her entitlement. Anon, *The Laws Respecting Women, as they regard their natural rights, or their connections and conduct*, (London, 1777), p. 200. Burn was more specific and said that it was only if the husband received an eloped wife again that her right to dower was revived. This is somewhat ambiguous because he then observed that a wife could not be barred of her dower by the common law even if the divorce were had for the adultery. Burn, *Ecclesiastical Law* (2 vols. London, 1763), vol. 2, p. 44, 46. It is possible that some women separated for adultery did gain their inheritance. Eleanor Smith, for example, administered her husband's will when he died intestate in 1812, twenty-three years after their separation. DPR, William Smith, Ilderton, 1812. A widow was entitled to one third of her husband's estate when he died intestate. Amy L. Erickson, *Women and Property in Early Modern England* (London, 1993), p. 178.

¹⁰⁵ Additionally, their earnings were personal property and therefore their estranged husbands' property. Nor could they run their own business due to their contractual incapacity under common law. Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Oxford, 1983), pp. 31-2.

¹⁰⁶ BI, *Spence c. Spence*, 1782.

Although the sums awarded for alimony in York and Durham consistory courts were somewhat higher, in line with the social status of litigants, they were still low. At the end of the eighteenth-century, Lady Mary Shafto, who was living separate from Sir Cuthbert, complained in her cruelty separation suit that he was being difficult about paying her the 'scanty pittance' of £40 per annum that they had agreed upon.¹⁰⁷ In 1737 the maintenance of Elizabeth Bowes, wife of a gentleman, was fixed at 6s. 8d. per week, and in 1745 John Bowness, who held land worth £60 per annum, was ordered to pay his wife the weekly sum of 5s.¹⁰⁸ Most of the amounts fell within the range of London women's wages that Earle established would be inadequate for a lone woman with children.¹⁰⁹ Lois Miller summed up the problems in her letter to her proctor in 1744, answering his questions about her husband's income (a mariner of Tynemouth), for her forthcoming restitution suit.

S[i]r.

Yours I recived and shall give you an account from the owner of the ships owne hand who is dayly expected hear; of what Wages he paid him [Thomas] the Last year which was Fifty Pounds or thereabouts, besides other perquisits he has the oppertunity of makeing. now S[i]r. I would desier you to Judge what six pounds a year will doe for a Maintainance for as he [h]as removed all his Goods from me, if I was to take a room furnished would cost me fivety shill[ings] a year out of it, and then what shuld I have for to Live on: but I shall be ruled alltogather by youre better Judgement, for if you think the Court will not give me more, I shall desier the favour of you to make it up in the best manner you Cann, he paying all Charges; and soe mutch p[er] Year ever since he Leftt me: the which will be two years come Lady day next, since he paid me fifty shillings for one y[ea]r. as p[er] agreement due then: but it was two years gone Last Christmass or thereabouts since he Leftt me.¹¹⁰

Men could easily renege on agreements. Charles and Jane Allison agreed their separation suit before it reached sentence and he gave a bond in September 1766 that he would let her live separate, pay all the arrears of alimony, give her £15 to buy furniture

¹⁰⁷ BI, *Shafto c. Shafto*, 1797.

¹⁰⁸ BI, *Bowes c. Bowes*, 1737; DDR *Bowness c. Bowness*, 1745.

¹⁰⁹ Earle, 'female labour market', pp. 342-3.

¹¹⁰ DDR, *Miller c. Miller*, 1743. Thomas died intestate in 1746 and Lois was his administrator. DPR, 1746, Thomas Miller.

and necessaries, and thereafter pay her 7s. a week for life. Later he refused to fulfill these conditions.¹¹¹ Charles Eades, a leather officer, tricked his wife in January 1715 into going to London to claim an inheritance. Ann only found out the falsehood on arrival. After a few weeks she returned home to Leeds to find that Charles had apparently gone to Ireland. By accident she discovered that in fact he had moved to Morpeth and told everyone there that he was a widower. Ann caught up with him and, after his violent outburst at being found, got him to promise to give her £10 per annum. By January 1716, however, she was forced to petition the Northumberland quarter sessions for help to enforce him to fulfil his promise.¹¹²

Wealthier women who had a separate maintenance contract could attempt to have it enforced by the courts of equity. Common law did not enforce husbands to pay alimony.¹¹³ A court would assign a maintenance, but compel the husband to pay it by ecclesiastical censures, which were restricted to excommunication.¹¹⁴ Women could turn to the ecclesiastical courts themselves. The motivation behind suits for restitution for conjugal rights seems often to have been to gain alimony, rather than to force a husband to cohabit.¹¹⁵ As Jane Allison told Peter Bowlby, her proctor, she needed her husband to allow her 'a sufficiency to keep me as his wife'.¹¹⁶ An information to the Chancellor of York, recognised this function. Referring to a cause begun by Margaret Leighton against John Leighton in Durham in 1770, a proctor (or, perhaps, the advocate) commented that 'Matrimonial Causes of this nature have always been Favoured with particular Privileges to Enable the Wife to Obtain Justice (vizt.) the

¹¹¹ DDR, *Allison c. Allison*, 1765.

¹¹² NRO QSB 42, fol. 4. He forged a letter, which he later destroyed, claiming her brother had died and left her £500, which she had to collect from London.

¹¹³ O. R. McGregor, Louis Blom-Cooper, and Colin Gibson, *Separated Spouses: A study of the matrimonial jurisdiction of magistrates' courts* (London, 1970), p. 6.

¹¹⁴ J. E. Hovenden, *Commentaries on The Laws of England by Sir William Blackstone*, vol. III, 19th edn (London, 1836), p. 94.

¹¹⁵ Most of the twenty-four restitution causes had female plaintiffs.

¹¹⁶ DDR, *Allison c. Allison*, 1765, correspondence.

Allowance of Alimony Pending the Suit'.¹¹⁷ Five female plaintiffs were successful in gaining a sentence that ordered their spouse to restore conjugal rights and one was ruled against. Twelve causes were abandoned or agreed. It may be that a decree in the female plaintiff's favour, or the threat of one, restored financial maintenance.

The courts of quarter session also dealt with separated women's financial needs through poor relief. Maintenance was frequently allotted under the statutory obligation for husbands to reimburse poor law authorities. The Poor Relief (Destitute Wives and Children) Act of 1718 permitted the goods, chattels or annual rent of absconding husbands to be seized as a source of maintenance for his wife and children under the warrant of two justices.¹¹⁸ In 1738 Thomas Gooding of South Shields had his goods seized to the value of £2 19s. to keep his wife until the next quarter sessions.¹¹⁹ John Fawcett, a husbandman of Darlington had gone into another county in 1743, but his rent from land in Carlton, to the sum of £10 a year, was ordered to go to his wife and six children.¹²⁰ The rents from Benjamin Finch's real estate were seized annually for at least eight years to reimburse the parish for £6 14s. to support his wife.¹²¹ A number of these men were small land-owners, yeomen, and very occasionally gentlemen, who, despite their ability to support their family, still refused to do so. The only thing wives could do to access the money was to apply to their parish.¹²² Eighteen percent of the desertions appear to come to the attention of the quarter sessions by the direct action of the abandoned wife. Another fifteen abandoned women probably initiated the request for

¹¹⁷ BI, *Leighton c. Leighton*, 1770. Information upon the defendant John Leighton's answers to the first 22 articles of the libel, to the 29th article and to the allegation of faculties. It is contained within material that remained at Durham after the case was transmitted.

¹¹⁸ The quarter sessions' bench was empowered to make an order that enabled parish officials to sell the goods and chattels as necessary, and the overseers were required to submit their accounts for approval by the quarter sessions. Nicholls, *English Poor Law*, vol. II, pp. 5-6; McGregor *et. al.*, *Separated Spouses*, p. 150

¹¹⁹ DRO Q/S/OB 9, p. 166. See also NRO QSO 8, Easter 1743, p. 40, Robert Armstrong's goods and chattels ordered to be disposed of to the sum of £6 to pay for his wife's and five children's keep.

¹²⁰ DRO Q/S/OB 9, p. 401.

¹²¹ For one entry, see DRO Q/S/OB 13, 15 July 1767, p. 129.

¹²² Even more frustratingly for some of the wives, the land and personal estate in question may have been purchased with the wives' money in the first place.

relief in order to get access to their husband's rents or goods, although it was their parish overseers or churchwardens who applied to the quarter sessions to execute their statutory right.

Unfortunately the demands were sometimes ignored, with men delaying payment for up to a year. In summer 1796 application was served upon Thomas Yates, a blacksmith, by the parish of Topcliffe for a maintenance order to ensure he contributed to his wife's and son's keep. In February 1797 he was bound over to appear at Northallerton Easter sessions to answer an indictment for disobeying the order. At the summer sessions he was found not guilty, because, presumably, he had settled his debts in the meantime.¹²³ Some men needed to be pursued further. After Anthony Burn, of Billingham, a yeoman, left his family, his estate, goods and chattels were ordered to be seized in 1734. One year later, in October 1735, a further complaint dealt with by Durham quarter sessions asserted that Anthony was still refusing to maintain his family, and had done so for eighteen months. The court ordered him to pay 3s. 6d. a week to the children's upkeep.¹²⁴ Next Anthony was taken into custody by the bailiff for refusing to pay alimony. He became ill while in custody and his wife, Elizabeth, kindly visited him from her lodgings at Norton. Consequently, they made up their differences, and though they continued to live separately, he visited her at Norton and she eventually gave birth to twins. Anthony's loving and affectionate manner soon wore off and he again refused to support his family, despite his substantial wealth (some of which came to him from his wife, a widow at their marriage). So Elizabeth initiated a restitution suit in December 1736 to force him to maintain her. Three years after the first order, in February 1737, he announced to the court that he was ready to receive his wife at bed and board, and pay costs.¹²⁵

¹²³ NYCRO QSB/1796, film 002532; QSB/1797, films 002633; 002909; QSM/1797, pp. 117; 128.

¹²⁴ DRO Q/S/O 9, pp. 55, 98, 99.

¹²⁵ DDR, *Burne c. Burne* [sic], 1736, letter to John Pye. See also DDR III, 23 April 1726 to July 1737.

Other men managed to avoid maintaining their family altogether. Elizabeth Bowes petitioned Durham quarter sessions for relief in July 1731 when Thomas Bowes of Quarryhill, a gentleman, left her and their three children without maintenance. The court ordered Thomas to pay 40s. monthly to his family. At Easter the following year Thomas continued to be in contempt of the order. It is not clear what happened for the next few years. It may be that Thomas and Elizabeth lived together again, because in September 1737 she brought a separation suit against him on the grounds of adultery and cruelty at Durham consistory court. By the beginning of 1738, Thomas had appealed the cause to York, largely because he was condemned to pay alimony. By February 1739, York had excommunicated him for contumacy. It is probably undiscoverable whether he ever did fulfil his obligations to his wife.¹²⁶ Some men even sold their possessions so that nothing was left which could be used for their wives' maintenance. Christopher Wood was bound-over to answer the objections of Bilsdale's inhabitants about his threatening to leave his pregnant wife chargeable to the parish, having sold his possessions to that end.¹²⁷ Essentially, separated wives relied upon the good nature of estranged husbands to assist them financially, or allow them to support themselves.¹²⁸

VII

In her examination of women's ability to participate in consumption despite coverture, between 1760 and 1860, Margot Finn suggests that some separated wives used the law of agency in order to circumvent the inadequacy of maintenance.¹²⁹ Theoretically, this was possible, but on balance seems to have been viable only when women had their husbands' support. Even during marriage a husband was permitted to limit or refuse his wife's use of the law. If she was adulterous, left him without provocation, or mutually

¹²⁶ DRO, Q/S/O 8, pp. 547, 553, 557. BI, *Bowes c. Bowes*, 1737. See also BI, Chanc.AB 47.

¹²⁷ NYCRO QSB/1693, film 389.

¹²⁸ For a similar viewpoint see Erickson, *Women & Property*, p. 19.

¹²⁹ Margot Finn, 'Women, Consumption and Coverture in England, c 1760-1860', *The Historical Journal*, 39, 3 (1996), 709-12.

agreed to a separation, a separated wife was unable to pledge his credit.¹³⁰ Estranged wives were further handicapped if they tried to keep their children. When Grace Featherstone sued her husband for restitution, her husband's proctor sought legal advice about whether maintenance for their child could be demanded by Grace, since she had taken it against her husband's will and refused to return it to him. The reply was that by refusing to let the father have the child, to whom it 'belongs', Grace could not demand maintenance for it, or pledge Ralph's credit for herself or the child.¹³¹

Admittedly, husbands who forced their wives out, deserted them, or drove them to leave in order to escape cruelty, were obliged to allow them use of the law of agency.¹³² Yet newspaper advertisements reveal that some violent men ignored this. Neither Henry Giles' newspaper advert, nor his wife's reply, referred to his physical abuse. But when the adverts are cross-referenced with Mary's separation suit on the grounds of cruelty against Henry, at Durham consistory court in the same year, her elopement is transformed into her fleeing for her life. Two months before Henry's advert, her Libel listed his two attempts to murder her during their three years of marriage, once with a axe, the other by strangling.¹³³ John Greenwell's notice in 1768 unequivocally stated that he and his wife had parted by consent; thus he would not be answerable for her credit because he had awarded her a sufficient annuity. He equitably concluded, 'I could not help this Advertisement for my own safety, and hope she will think it lenient.' Conversely, Margaret's suit for separation, five years later, alleged that she left to escape his cruelty.¹³⁴ In Elizabeth Bowie's response to her husband's advert she put the

¹³⁰ This explains why advertising husbands emphasised that their ~~wife~~^{wives} had left them without provocation or, when declaring a mutually agreed separation, referred to an indenture, bond, or deed, which committed them to providing a separate maintenance for their ~~wife~~^{wives}. See sections on alimony and elopement, Burn, *Ecclesiastical Law*, vol. 2.

¹³¹ DDR, *Featherstone c. Featherstone*, 1776.

¹³² It is difficult to understand why Margaret Hunt contends that a woman 'did not technically possess the right to leave her husband, even if he beat her'. Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth-Century London', *Gender & History*, 4 (1992), 19.

¹³³ *Newcastle Journal*, 19 May, p. 3; 2 June, p. 3, 1744. Also DDR, *Giles c. Giles*, 1734. Mary was granted her separation, although in July 1746 Henry was excommunicated for refusing to pay Mary's £3 costs.

¹³⁴ *Newcastle Chronicle*, 13 August and 17 September 1768, p. 1. DDR, *Greenwell c. Greenwell*, 1773.

record straight, concluding, 'And whereas I did not elope from him, but was kicked out of Doors, even to the Danger of my Life had I continued. Therefore, tis referred to Common Sense and the matrimonial Law, whether my said Husband, Archibald Bowie, can prove or make good this Allegation against me, his Wife, he being the principal Aggressor.'¹³⁵

To support her argument, Margot Finn uses five nineteenth-century court cases to illustrate that judges and juries frequently upheld wives' right to pledge the credit of their separated husbands, allowing them to gain maintenance in goods, rather than cash, for which their husbands would ultimately be forced to pay.¹³⁶ In general, however, this fall-back position was less successful in the previous century. The number of ways that a man could evade the law of agency probably made trades-people wary of supplying known separated women. This was, perhaps, reinforced by locally publicised law suits, which suggested that they ran the risk of being forced to resort to a time-consuming, costly, and sometimes unsuccessful legal action to recoup their losses.

In two cases reported in the northern press, the creditors lost out in their bid to gain payment for debts run up by a separated wife. *The York Courant*, in 1753, considered an action heard at York Assizes, against Roger Elliott, a broker and auctioneer, for linen drapery goods purchased by his wife. When proof was supplied that she had eloped twenty years before, the plaintiffs were non-suited and the defendant was deemed not liable to pay for the goods.¹³⁷ As Finn found, social status coloured the extent to which the law of agency could be used.¹³⁸ In a London suit, reported in 1793, the wife of a clergyman had run up a bill of £82 at Dyde & Scribe's in Pall Mall for millinery goods. The traders brought their action against her husband to recover payment. He resisted,

¹³⁵ *Newcastle Journal*, 31 January - 7 February 1756, p. 3; and 7-14 February 1756, p. 3.

¹³⁶ The five cases that she quotes are not straightforward and most fall within loopholes. Finn, 'Women, Consumption and Coverture', pp. 712-14.

¹³⁷ *York Courant*, 18 September 1753, p. 2.

¹³⁸ Finn, 'Women, Consumption and Coverture', p. 710.

although he paid £40 into Court as part payment. According to the newspaper, Lord Kenyon and the jury were of the opinion that this more than covered the equitable claims of the plaintiffs, and the verdict went for the defendant. Lord Kenyon's maxim was quoted, 'that everyman is bound to provide for his wife in the necessities of raiment according to his circumstances', but here the goods were mere trappings.¹³⁹

In another two newspaper reports of creditors attempting to pursue husbands for their wives' debts, the husband was not required to settle. *The Newcastle Courant* gave a detailed account, in 1787, of a cause before Judge Buller. An action to recover £27 was taken against Mrs Williams, who kept a coffee house in the Strand. She pleaded that as a married woman she was not liable to pay the debt. The plaintiff's counsel admitted that she was married to a tailor, but explained that she was separated and provided with a maintenance, in order to prove that she was a sole trader. The paper printed Judge Buller's statement that in this situation the husband was not liable to pay her debts, unless the allowance was not competent, or not properly paid. While this appeared to offer some flexibility for separated wives' maintenance, it was hardly a safe bet. In this case, despite the defendant's counsel's attempt to prove that a reconciliation had occurred, the jury found for the plaintiff, obviously believing Mrs Williams should pay.¹⁴⁰

Similarly, in 1783, *The Newcastle Chronicle* gave an account of a suit which it portentously announced was of consequence to traders. When an eminent tradesman had brought an action against a lady for goods, she pleaded that she was a 'femme couverte', and that her husband had gone to his estate in Ireland, leaving her with a separate maintenance. The question was whether, under these circumstances, the plea of coverture would protect the lady from arrest and judgement. The report detailed Lord

¹³⁹ *York Chronicle*, 18 July 1793, p. 2.

¹⁴⁰ *Newcastle Courant*, 30 June 1787, p. 4. Susan Staves found that from around 1675 to 1778 a wife with a separate maintenance allowance could be sued as though she were a *feme sole*, because by making the contract she had relinquished her entitlement to her husband's support. Staves, 'Separate Maintenance Contracts', *Eighteenth Century Life*, 11 (1987), 86.

Mansfield's opinion that the plea of coverture was not valid when the husband was exiled by the laws of his country, because creditors could not pursue him for debt, and when a couple had been separated due to the wife's adultery. Although the issue of the consensual nature of the separation in question caused some problems for the judge, he directed that the wife be considered as a *femme sole*, because the husband's creditors could not pursue him in Ireland. The cause was decided against her with costs.¹⁴¹ Legal handbooks were not particularly hopeful about women's chances in such cases. Richard Burn discussed four court cases under his entry for 'wife' in *The Justice of the Peace and Parish Officer*, none of which left the husband responsible for a debt.¹⁴² Evidently separated wives were unable confidently to use the law of agency as an alternative to a fixed alimony.

¹⁴¹ *Newcastle Chronicle*, 8 February 1783, p. 2.

¹⁴² Burn, *Ecclesiastical Law*, vol. II, pp. 382-4.

CHAPTER TEN

'Is not a State of continual War to be avoided?': Conclusion.

'If a Man is agreeable to himself, and to his Wife; and his Wife be of the same temper; and each strive to make the other happy; then is Marriage a blessing, and then only'.²

I

In 1685, a deponent before York Dean and Chapter court explained why he understood that his master and mistress, Thomas Bullock and Ellen Turner were married to each other. While he lived with them as a servant, 'he called him [Thomas] Master, and the said Ellen Dame, and ... she ruled and comanded [sic] as such in the said house'.³ Their marital roles, and, actually, what symbolised marriage, were understood within the terms of their household. This integration of marriage and the domestic economy is most clearly seen in the problems suffered by those excluded from a functioning relationship who coped best if they could reconstruct a substitute household.⁴ Significantly, both sexes faced a decline in socio-economic circumstances during separation. The combination of these economic factors with the lack of formal and full divorce, makes it easy to understand why, as chapter two demonstrates, individuals, communities and institutions offered assistance to spouses whose marriages were collapsing.

In fact, marriages were expected to be unstable, and while complete breakdown may have been stigmatised, marital conflict was not. Dispute between spouses was culturally recognised, labelled and analysed.⁵ The discussion was intended to normalise it, to show

¹ From advertisement, *The York Courant*, 21 September 1756.

² *GM*, June 1735, pp. 303-4, final thoughts in a piece giving advice about entering matrimony wisely.

³ BI, D/C C.P.1685/7, *Office promoted by Stockdale c. Bullock and Turner*, for marriage within prohibited degrees.

⁴ See chapter nine.

⁵ It has been suggested that this had a social function. By drawing 'attention to marital incompatibility' it was 'possible to reinforce the social norms of marital stability'. Herman Lantz, *Marital Incompatibility*

that it could be resolved. This explains why the aim for quiet within marriage was a cultural trope. After all, the absence of conflict was quiet. The *Book of Homilies* warned that contention meant that couples could not 'bee in quiet together'. It prized quiet more than houses, servants, money, lands and possessions.⁶ Over a century later, in 1759, Thomas Marriott, in his work on female conduct, wrote that a good wife allowed a man to live 'in soft Quiet' and 'mutual Harmony'.⁷ Both sexes craved this state. Cruelty defendants often claimed that a wife could live with them in a quiet, easy and comfortable life if she wished. Musing on his conjugal difficulties in his advert, Charles Pearson, a merchant tailor of York, asked, rhetorically, 'Is not a State of continual War to be avoided? What is all the World without Quietness?'.⁸ Grace Allenson said 'that if she might have but bread and water to live on she were happy if she could but be quiet with it'.⁹

Much of the advice literature about appropriate behaviour for wives and husbands was essentially about dealing effectively with conflict.¹⁰ Matrimonial quiet was not easily achieved; it had to be worked at constantly. A sentimental paean in *The Newcastle Chronicle*, in 1764, by 'Hymenaeus', sang the praises of marriage from a male point of view and advised both spouses to strive:

and *Social Change in Early America* (London, 1976), pp. 36-7. But this confuses marital conflict with marital breakdown.

⁶ *Book of Homilies, The second Tome of Homilies, of such matters As were Promised and Entituled in the former part of Homilies* (London, 1633), pp. 240, 247.

⁷ Thomas Marriott, *Female Conduct: being an essay on the art of pleasing. To be practised by the fair sex, before, and after marriage. A poem in two books.* (London, 1759), p. 269.

⁸ *The York Courant*, 21 September 1751, p. 3.

⁹ BI, Allenson c. Allenson, 1675. Quiet within marriage was not just a private matter; it was of public concern too, see BI, Robson c. Robson, 1700. This refers to the committal of Anne Robson to gaol because she refused 'to behave herself and live peaceably and quietly w[i]th her husband'.

¹⁰ For instance, Sarah Pennington, *An Unfortunate Mother's Advice to her Absent Daughters; in a Letter to Miss Pennington*, 2nd edn (London, 1761), pp. 61-3; Richard Steele, *The Ladies Library, written by a Lady*, 3 vols. Published by Sir Richard Steele, 6th edn (London, 1714), vol. 2, pp. 37-54; Hannah Woolley, *The Gentlewomans Companion; or, a Guide to the Female Sex: containing directions of behaviour, in all places, companies, relations, and conditions from their childhood down to old age* (London, 1675), pp. 103-7.

To make *home* the seat of perpetual delight;
Ev'ry moment each studies to seize'
And we find ourselves happy, from morning to night,
By the *mutual endeavour to please*.¹¹

A commentary on wedlock in *The Newcastle Journal* in 1760 concluded, 'In a word, the likeliest way for a man to obtain a good wife, or keep one so, is to be good himself'.¹² In 1773, *The York Chronicle's* 'Repository on Marriage' was suffused with domesticity, describing wives offering domestic balm to harassed hardworking husbands when they returned home. It recommended: 'To preserve this union, and render the matrimonial state more harmonious and comfortable, a mutual esteem and tenderness, a mutual deference and forbearance, a communication of advice and assistance are absolutely necessary'.¹³

Unresolved matrimonial dispute could have more than emotional consequences. As Olwen Hufton detects, '[t]he fitting management of the household defined its standing in the community. Apparent harmony in domestic relations mattered'.¹⁴ Conflict inferred the possible break-up of a household and therefore inability to pay debts. Craig Muldrew shows that the early modern household was an economic unit and institutional location of wealth with each household bound together with others in the chain of credit.¹⁵ Thus, other households had a financial stake in knowing the marital stability of their customers. For example, a secure marriage meant that credit could be extended to the wife with some certainty of being re-paid.¹⁶ Rumour of marital breakdown may have alerted retailers to a household's potential lack of creditworthiness. This explains why northern men with marital problems attempted to restore public confidence in their household's creditworthiness. Men who had resolved matrimonial problems also notified the public. Robert Renwick, an engineman of Newcastle, placed an advert in

¹¹ *The Newcastle Chronicle*, 20 October 1764, p. 4.

¹² *The Newcastle Journal*, 6-13 September 1760, p. 1.

¹³ *The York Chronicle*, 19 February 1773, p. 4.

¹⁴ Hufton, *Prospect Before Her: A History of Women in Western Europe, 1500-1800* (London, 1995), p. 152.

¹⁵ Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (London, 1998), pp. 9, 97, 148-172.

¹⁶ See chapter nine, pp. 210-15.

1787 informing readers that the family differences between him and his wife and her mother were now 'happily agreed'. Under the pretext of the differences, evil-minded people had propagated false reports injurious to his and his wife's character. He notified them that he would prosecute any person continuing with such defamation.¹⁷

II

Unlike the cartoon-image discussed in the introduction,¹⁸ the picture of wedlock that emerges from this study is complicated and dynamic. It cannot be encapsulated within simplistic models of patriarchy or gender difference. To contemporaries, while men may not have contributed to day-to-day housework, they were inextricably tied to the household.¹⁹ This counter-balances the image in some work on marriage, of husbands who are like large and disruptive rocks dropped into a placid pool; interlopers within the home even within marriage. Discussing women only in terms of the 'private' sphere is rightly criticised. It is just as misleading to consider men mainly outside the household. After all, it has been shown that the notion of separate spheres is redundant, particularly for the eighteenth-century.²⁰ Yet most secondary sources treat men's experience as discrete: as heads of household (and therefore as petty tyrants), as workers, and in terms of reputation and/or manhood.²¹

¹⁷ *The Newcastle Chronicle*, 27 January 1787, p. 2.

¹⁸ See chapter one, pp. 5-6.

¹⁹ See chapter seven.

²⁰ For this issue, H. Barker and E. Chalus (eds.), *Gender in Eighteenth-Century England: Roles, Responsibilities, Representations and Responsibilities*, (London, 1997), introduction.

²¹ For a critique of those studies which assume that in 'the household, men act out of a desire for 'control over and exploitation of women' see Michael Roper and John Tosh (eds.), *Manful Assertions: Masculinities in Britain since 1800* (London, 1991), p. 10. For men as workers, John Rule, *The Vital Century: England's Developing Economy, 1714-1815* (London, 1992), pp. 145-8, 179-198. In terms of honour and manhood, see Anthony Fletcher, *Gender, Sex & Subordination in England 1500-1800* (London, 1995), chapters 7 & 16; P. Carter, 'Men about Town: representations of foppery and masculinity in early eighteenth-century urban society' in Barker and Chalus (eds.), *Gender in Eighteenth-Century England*. Refreshingly, one recent study considers men largely in terms of their domestic situation. E. A. Foyster, *Manhood in Early Modern England. Honour, Sex and Marriage* (London and New York, 1999). Only occasionally, however, is an attempt made to integrate all the aspects. Two recent works are L. Davidoff & C. Hall, *Family Fortunes. Men and women of the English middle class, 1780-1850* (London, 1987); Anna Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (London, 1995).

Yet, a man's self identity was based on all these factors, not least the household.²² James Currie complained in his Personal Response, in 1727, that his wife had 'frequently run out from House to House in the Neighbourhood with the most vile, false and grossest Lyes and complaints that ...[he] had been beating of her and had abused her as never woman was, when [he] had not given her a Blow nor touched her'. Strikingly, James claimed that Jane's actions were wicked attempts against his 'person Character Family and Fortune even to the hazard and danger of his Life, the disquietude of his mind the loss of his Health and Constitution the injurious impairing of his Fame and Character and almost the total ruin of and destruction of his Family and Fortune'.²³

To James, his livelihood was threatened by his marital collapse because his personal reputation was tied to his wife's and encompassed within his household. He was right. A household was formed of individuals; thus its overall credit depended upon their personal reputations.²⁴ This bound together spousal honour. In the 1670s, Hannah Woolley advised her readers to manage the money with which their husband entrusted them, 'to his and your own credit'.²⁵ The Reverend Mr. Francklin, in his sermons on the duties of spouses explained, nearly a century later that the good husband 'is more anxious to preserve his own character and reputation, because her's [his wife's] is blended with it'.²⁶ Indeed, one of the contemporary characteristics of a 'bad' wife was to damage her husband's business by publicising their marital discord.²⁷

²² Michael Mascuch, 'Social mobility and middling self-identity: the ethos of British autobiographers, 1600-1750', *Social History*, 20, 1 (1995), 55-60; Margaret Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (London, 1996), pp. 148, 167.

²³ BI, Currie c. Currie, 1727, Personal Response and Defensive Allegation.

²⁴ Muldrew, *Economy of Obligation*, pp. 157-8.

²⁵ Woolley, *Gentlewoman's Companion*, p 107.

²⁶ *The Newcastle Chronicle*, 31 August 1765, p 1.

²⁷ Peter Earle, *The Making of the English Middle Class: Business, Society and Family Life in London, 1660-1730* (London, 1989), p. 202.

III

As we have seen, wives did possess a great deal of practical power in marriage. They were, in addition to their roles as mothers and housewives, consumers for, and suppliers of, the domestic economy.²⁸ Since women brought property to a union, and continued to purchase goods from an income to which they contributed, coverture did not impinge upon wives' actions as far as might be expected. It certainly permitted them to feel that they continued to own their property during wedlock and, at best, gave rise to ideas of shared ownership.²⁹ This co-existed alongside common law, advice literature and scripture, which informed couples that married men were the patriarchal head of the household and the recipient of wifely subordination.

Similarly problematic was the fact that whether spouses worked supportively alongside each other or separately, both actively participated in the domestic economy throughout the early modern and modern periods.³⁰ Yet husbands may well have seen themselves as providers. The male breadwinner was a nineteenth-century political and ideological phenomenon, but in the long eighteenth-century, husbands were often identified as the pre-eminent economic figure upon which the family depended for maintenance.³¹ Their work was considered more important than that of their wives'; both inside and outside the home.³² In this vein, husbands were warned not to exploit their superior financial position, and were obliged to fulfil numerous financial responsibilities to their wives and offspring.³³ Yet, most husbands depended, quite literally, upon the economic and

²⁸ See chapter seven, pp. 147-64.

²⁹ See chapter eight.

³⁰ Compare Alice Clark, *Working Life of Women in the Seventeenth Century*, 3rd edn (London, 1992) with Peter Earle, 'The female labour market in London in the late seventeenth and early eighteenth centuries', *Economic History Review*, 2nd ser., XLII, 3 (1989), 328-353. Also, Jan de Vries, 'Between purchasing power and the world of goods: understanding the household economy in early modern Europe' in Pamela Sharpe (ed.), *Women's Work. The English Experience 1650-1914* (London, 1998), pp. 228-9.

³¹ Alice Clark claimed that there was no assumption that a husband was to support his wife in the seventeenth century because spouses were mutually dependent. Society simply had an instinctive feeling that the husband provided rent, shelter and protection while the wife provided food. Clark, *Working Life*, p. 12. Although Anna Clark concedes that the germ of the notion existed in the late eighteenth century, she argues that it could not prevail while wives working to contribute to the family income were widely accepted, even unquestioned. Clark, *Struggle for the Breeches*, pp. 150, 197-9, 218, 223, 248.

³² See chapter seven, p. 155.

³³ See chapter eight, pp. 177-83.

household input of their wives. Without their wives they faced the loss of income, household management in all its respects, child care, and household goods.

The apparent chasm between the lived reality of married life and the hierarchical ideas of prescription has been considered in depth. One explanation is that women's upbringing taught them how to negotiate this paradox.³⁴ But, as is increasingly realised, it was this very gap that facilitated the success of patriarchy. Tim Stretton argues, for example, that it meant that women trod a middle route. For while they could not live up to the positive images of prescription, they tried hard not to live down to its negative ones.³⁵ Yet the true genius of patriarchy was that the range of behaviour that it permitted was in-built into its very structure.

It is not simply that love and mutual endeavour tempered it. Mutual affection was indeed crucial. As we have seen, men, just like women, were not supposed to breach the chastity of marriage.³⁶ The infidelity of either spouse caused havoc: male adultery was considered to be a form of abuse to wives, and female adultery to lead to mental imbalance in husbands.³⁷ Despite the emphasis upon the domestic economy, it is not the aim of this thesis to offer an unsubtle and purely materialist vision of marriage. Marriage was not made, or intended to function, simply for economic reasons. As Naomi Tadmor observes about 'household-families', they were often contractually based and 'involved an exchange of work and material benefits', but this does not mean that relationships were purely instrumental. Instrumentality could go hand in hand with affection.³⁸

³⁴ Linda Pollock, "'Teach her to live under obedience': the making of women in the upper ranks of early modern England", *Continuity and Change*, 4, 2 (1989), 231-58.

³⁵ See Tim Stretton, *Women Waging Law, in Elizabethan England* (Cambridge, 1998), p. 10-11, 229.

³⁶ This was probably so in the previous century, see Keith Wrightson, *English Society 1580-1680*, (London, 1982), p. 99.

³⁷ See chapter five.

³⁸ Naomi Tadmor, 'The Concept of the Household-Family in Eighteenth Century England', *Past & Present*, 151 (1996), p. 124.

It is clear from the widespread adherence to marriage, whether solemnised in church, irregular or bigamous unions, or merely cohabitation, that it filled emotional as well as economic needs.³⁹ Evidence of this is most often recoverable from elite couples. Amanda Vickery dips into the marriages of five couples in Georgian England, through their correspondence. All had affectionate relationships that provided much satisfaction to them.⁴⁰ Just occasionally, unexpected and moving examples of the pleasure that ordinary couples could derive from their marriage comes to light. In 1684 William and Frances Thorold were presented to the church courts, probably for pre-marital sex. In fact, the two servants had married secretly in order to keep their positions until their contracts were up. As proof, an expressive letter was exhibited, from Frances to William, written in 1683:

My dear,
thy well-being is the joy of my heart, when two hearts are one they both repose together as ours did. I found myself to be very weary but thy cordial hath refreshed me, one hug with thee my dear would set all to rights. I now find that satisfaction leads to true content, which God grant, we both enjoy to Gods glory heart, and the eternal happiness of our souls hereafter is the faithful Prayer of, my dear.
Thine to the end of days.⁴¹

In fact, an unwieldy combination of love, respect and economic security lay at the centre of wedlock. This mix of the heart and the head was the basis of the solemnisation of matrimony, in which both spouses promised to love, honour and keep each other through all of life's events.⁴² The conjugal vows formed a raft of obligations and responsibilities to which spouses clung.⁴³ Even those who married irregularly often

³⁹ See chapter nine, pp. 194-9.

⁴⁰ Vickery, *Gentleman's Daughter: Women's Lives in Georgian England* (London, 1998), pp. 66-72. For earlier examples see Fletcher, *Gender*, pp. 154-62.

⁴¹ BI, C.P. H/3589 *Office c. Thorold and Collins*, 1683/4. No libel survives, therefore the exact reason for presentment is uncertain. The case is indexed as 'matrimonial'.

⁴² Solemnization of Matrimony, *The Book of Common Prayer*.

⁴³ Sixteenth-century spouses in the Court of Requests used the language of marital obligation, which was performing various obligations and expecting certain actions in return. Stretton, *Women Waging Law*, pp. 193-4.

made the same promises to each other.⁴⁴ With the recognition that marriages were subject to internal and external strains, most commonly about power or finances, came the optimistic belief that affection would glue a relationship together under these stresses. Love, or the lack of it, was seen by some as the determining factor. For example, the cleric of Wadworth, in Yorkshire, described, in 1721, how John Laughton refused his attempts to mediate between him and his wife. John 'fell into a violent passion and said God Damn her he neither would nor could lead his Life with her adding that he did not Love her'.⁴⁵

Furthermore, economic inter-dependence was important because it gave wives physical protection. In order to function efficiently in the household and in contributing to the domestic income, women needed security, safety and the freedom to make important decisions. They were not the victims who shuffle depressingly through most histories of marital breakdown.⁴⁶ Their *de facto* power meant that they were not expected to internalise subordination. Violence was not a male prerogative and female aggression was recognised. Separation suits show that despite the existence of the law of correction, husbands were not meant to physically correct disobliging female conduct. Nor did wives swap submission in return for their husbands' protection as some historians have suggested.⁴⁷ Male irrationality was abhorred, and the onus was placed upon husbands to avoid succumbing to violence. In other words, men were not supposed to retaliate with blows at female lack of duty. It was not so much that they had to control their wives, but that they had to control themselves.

⁴⁴ For example, BI, Trans. C.P.1715/2, *Massey c. Ogden*, 1715. Jactitation case.

⁴⁵ BI, *Laughton c. Laughton*, 1721. Female patients of Richard Napier, in the seventeenth-century, often complained that their marriage was unhappy because their husband lacked love and affection for them. Michael MacDonald, *Mystical Bedlam: Madness, anxiety, and healing in seventeenth-century England* (Cambridge, 1981), pp. 102-3.

⁴⁶ For all Gowing's aim is to demonstrate female agency, the uncomfortable result is one of female complicity and, even, victimhood. *Dangers*, passim.

⁴⁷ See chapter four, pp. 71-84.

Essentially, the key to understanding gender relationships between spouses is that conflict was an expected part of matrimony. As such, there was an in-built flexibility to patriarchy that permitted personal adaptation as well as change over time. It had to be fairly plastic, since social, economic and cultural factors cut across the practice of hierarchy. This palatable patriarchy was evident in eighteenth-century advice about marriage, as much as in descriptions of relationships in legal records. Both reflect the belief that male power was always bound-about with restrictions, that female behaviour was permitted a degree of flexibility, and that both spouses must compromise to make a successful marriage. As Linda Pollock concludes, patriarchy was 'so long-lasting not because its harsh strictures were softened by affection but because the system contained within it the necessary structures for mitigation'.⁴⁸

IV

In the north of England in the long eighteenth-century both gender and biological sex impinged upon people's lives.⁴⁹ The gender order, however, did not give rise to wholly disparate understandings and experiences of marriage and reputation according to sex. This is in remarkable contrast to sixteenth- and seventeenth-century London where, apparently, there was 'a whole order of sexual difference' predicated on a gendered morality. In this world, conjugality and sexual behaviour were entirely distinct for men and women.⁵⁰ The question is whether marriage and reputation underwent revolution in the mid-seventeenth-century. The difference would have to lie in values and attitudes. After all, both studies use archives from the ecclesiastical courts, which did not alter their procedures over the period. The methodology used in this thesis, however, is critical in understanding the disparity. A wider source base is available for the

⁴⁸ Linda Pollock, 'Rethinking Patriarchy and the Family in Seventeenth-Century England', *Journal of Family History*, 23, 1(1998), 3.

⁴⁹ For the way gender constructions were internalised, although not necessarily adhered to, see Anne Kugler, 'Prescription, culture, and shaping identity: Lady Sarah Cowper 1644-1720' (University of Michigan, PhD Thesis, 1994). The way physical difference affected lives is convincingly outlined in Hufton, *Prospect Before Her*, p. 5.

⁵⁰ *Dangers*, pp. 1, 180, 275.

eighteenth-century.⁵¹ Illuminating important areas of the complaints made in the separation suits, this ensures that the analysis extends past the two complaints of adultery and cruelty that were necessary to initiate a separation suit. This range of grievances, which were equally significant to the couples themselves, allows the alternative interpretation to be reached.

Consequently, it is feasible that the difference in theories is not entirely due to a transformation in attitudes. This can best be explored by considering reputation. For, whereas work on marital conflict is limited, analysis of reputation is much more common. As this work has shown, married middling-sort men and women in the north of England did not prioritise any single element of their reputation, whether sexual, economic or social. This was probably not an eighteenth-century phenomenon.⁵² It is surely, meaningful that a number of sensitive studies have concluded that early modern male and female reputations did not rest upon fundamentally different bases.⁵³ The sexual and economic elements of honour cannot easily be picked apart. Married women did indeed dominate sexual slander suits before the church courts in the seventeenth- and first half of the eighteenth-centuries.⁵⁴ But deciding that this means that they prized their sexual honour above all else is misguided, since sexual insult impinged upon their trade or work prospects.⁵⁵ The insults themselves may not have been the real issue, simply the offensive gloss on the often long-term or existing dispute that underlay the

⁵¹ Quarter sessions, for misdemeanours relating to marital conflict and poor law work, are most comprehensive for the period studied. Newspapers are sources that are only available for the eighteenth century.

⁵² It has been astutely commented, 'both male and female reputation should be understood as a compound of moral and social factors; indeed, that the importance of the latter was so great that in both sexes the ideology of honour had the potential to subvert orthodox sexual norms'. Faramerz Dabhoiwala, 'The construction of honour, reputation and status in late seventeenth- and early eighteenth-century England', *Transactions of the Royal Historical Society*, Sixth Series, VI (1996), 203.

⁵³ For instance, see Garthine Walker, 'Expanding the boundaries of female honour in early modern England', *Transactions of the Royal Historical Society*, Sixth Series, VI (1996); Bernard Capp, 'The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England', *Past & Present*, 162 (1999).

⁵⁴ *Dangers*, pp. 33-38; Tim Meldrum, 'A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-1745', *London Journal*, 19, 1 (1994), 5; J. A. Sharpe, 'Defamation and Sexual Slander in Early Modern England: The Church Courts at York', *Borthwick Papers*, 58, 27.

⁵⁵ Meldrum, 'A Women's Court', p.12.

suit.⁵⁶ Equally, other studies from London illustrate that 'sexual reputation formed a significant component of male honour' throughout the early modern period.⁵⁷

Both Gowing and Foyster contend that seventeenth-century men lost honour if they were cuckolded, because this symbolised that they had lost control of their spouses.⁵⁸ By contrast, we have seen that this was far less clear-cut in the next century. Potential marital breakdown affected a household's credit, which, no doubt, led husbands to act against imputations made about their wives' fidelity. Importantly, representations of adultery shifted during the period. Adulteresses were seen less as brazen creatures, led astray by their overwhelming need for sex, and more as emotionally neglected wives who might even merit sympathy. Their husbands were afforded pity, not contempt because they were cuckolds, and the wives' lovers were cast in the role of a corrupting influence.⁵⁹

This shift may have been influenced by changes in the way sexuality was described. The body and gender were medically and ideologically re-drawn in the period. At its beginning, women were still deemed sexually voracious, by its end, sexually passive. For instance, writers of advice did not discuss female lust after the 1750s, and written and visual representations of sex focused on penetrative sex that emphasised female passivity.⁶⁰ Thus women were less likely to be envisioned at the mercy of their libido.⁶¹ In 1739, 'Philogamus' asserted that women were more inclined to 'Lubricity' than men,

⁵⁶ Meldrum 'A Women's Court', pp. 1; 14. For problems with taking words of sexual slander at face value see Sharpe, 'Defamation', p. 22.

⁵⁷ Capp, 'The Double Standard Revisited', p. 72. On the other hand, it has been suggested that there was 'a marked decline in the importance of sexual conduct to male reputation' from the mid-eighteenth century. Dabhoiwala, 'construction of honour', pp. 212-3.

⁵⁸ Dangers, pp. 187, 192, 271; Foyster, *Manhood*.

⁵⁹ See chapter six, pp. 127-37.

⁶⁰ The totality of this shift is questionable. While it was not total, an 'intermediate position' prevailed, which 'recognised erotic feelings in women but characterised male sexuality as more insistent and dominant'. Robert Shoemaker, *Gender in English Society, 1650-1850: The emergence of separate spheres?* (London and New York, 1998), pp. 64-68.

⁶¹ For example, statement by William Gladstone in debate about the 1857 Divorce Bill quoted in Shoemaker, *Gender in English Society*, p. 64.

fitted for it by both their souls and their constitutions.⁶² Fifty years later, the author of *Letters on Love, Marriage, and Adultery* could claim, '[i]t is much to the honour of women, that while men are universally abandoned, many of them are virtuous'. The anonymous author continued, 'men are the causes; and women well treated, would hardly ever go astray'.⁶³ Significantly, the nature of the treatment referred to was emotional rather than sexual fulfilment.

Identifying a relationship between these cultural and ideological shifts and changes in practice is a minefield of cause and effect. The shift in depictions of infidelity requires more research, particularly through criminal conversation actions. Still, it is possible to speculate that, if the blame for adultery had moved away from the wife, and could be attributed more to the seducer, then perhaps the betrayed husband's honour was less compromised in terms of controlling his wife. After all, it was another man who was to blame, not his inability to satisfy his wife.⁶⁴ Elizabeth Foyster argues that t'[i]nstead of the sexual dangers to manhood being exhibited by women, they came from men themselves' in the eighteenth-century.⁶⁵ This shift in attitudes may have allowed men more flexibility, for example, to announce their wives' elopement in public without fear of losing their credit. Yet, since husbands in the seventeenth-century also advertised about their wives, it is difficult to ascertain just when the turning point occurred. One wonders how far the domination in secondary sources of this concept of male honour is simply due to the restricted nature of evidence for the earlier period.⁶⁶

⁶² Philogamus, *The Present State of Matrimony: Or, the real causes of conjugal infidelity and unhappy marriages. In a letter to a friend* (London, 1739), p. 11.

⁶³ Anon., *Letters on Love, Marriage, and Adultery; Addressed to the Right Honorable The Earl of Exeter* (London, 1789), p. 94.

⁶⁴ For a rather eccentric explanation of the overall change, see Randolph Trumbach, *Sex and the Gender Revolution* (London, 1998), chapter twelve.

⁶⁵ Foyster, *Manhood*, p. 214.

⁶⁶ See chapter two, p. 39.

The final question to address is how far patriarchy changed over time. This analysis has placed much emphasis upon the links between marriage and the domestic economy, so it is essential to consider whether the changing nature of industrialisation affected gender relationships. Anna Clark, for instance, argues that nineteenth-century textile workers valued marriage because they worked alongside their wives. Consequently they treated them less abusively than artisans, who worked separately from their wives, and resorted to violence when unable to reconcile the tensions between their loyalties to family and to their journeymen's bachelor culture. To Clark, the very independence that wives gained from wage-earning clashed with husbands' desire for domination, creating conflict.⁶⁷ In fact, it is difficult to see why one model of work was more disruptive than the other. The north of England contained a range of economic life-styles, including early industrialisation. But there is no evidence that any occupation or particular group was more predisposed to marital conflict, during the period under study.⁶⁸ Cost and proximity to a particular court, or the relationship between an occupation and the need to protect credit through newspaper advertising, had more bearing on which conflictual marriages come to our attention than differences in status or occupation.

Attitudes to wife-beating are often seen as emblematic of the state of patriarchy. Although there were changes in the way wife-beating was presented to church courts, as well as an increase in numbers of complaints to justices, it is doubtful that patriarchy declined in the eighteenth-century.⁶⁹ Basically, the criticism of, and rejection of wife-beating could co-exist within a flourishing patriarchal structure. After all, voluble

⁶⁷ Clark, *Struggle for the Breeches*, pp. 34, 64, 74-5.

⁶⁸ This does raise the question of how far differences are due to regionality. Similar studies need to be carried out on other areas of England to answer this question. Interestingly, detailed work on Whickham did not reveal any major differences from the south of England in the marital relationships of mine-workers. David Levine and Keith Wrightson, *The Making of an Industrial Society: Whickham 1560-1765* (Oxford, 1991), pp. 308-329.

⁶⁹ See chapter six. The changes were also situated within a shift in legal institutionalised violence and paralleled wider cultural shifts in which cruelty to humans and animals was vilified in the second half of the century. Peter King, 'Punishing Assault: The Transformation of Attitudes in the English Courts', *Journal of Interdisciplinary History*, XXVII:1 (1996), 43-4; 59; G. J. Barker-Benfield, *The Culture of Sensibility. Sex and Society in Eighteenth Century Britain* (Chicago and London, 1992), pp. 231-247.

criticism of tyranny was the integral safety feature of patriarchy (in both early modern and modern periods).

Patriarchal relationships between the sexes were also subject to the new ways of describing male and female characteristics in the eighteenth-century. The sexes might be equal, but they were different. Echoing new medical understandings of the body, writers were 'establishing a world of two sexes' which resulted in developments in the cultural construction of masculinity and femininity.⁷⁰ Men were defined increasingly by civility and rationality and were expected to express themselves by means that did not include physical violence. It would be convenient to argue that this led to male violence being more vehemently rejected, particularly since Laura Gowing states that it was not 'conceived as dysfunctional' in the previous two centuries.⁷¹ Yet, because patriarchy could allow for male correction of wives, there had to be an in-built means by which to prevent wife-beating. This was achieved through advocating male self-control at all times, as is obvious, for example, in *The Book of Homilies*, published in 1633.⁷² As studies by Wrightson and Foyster convincingly demonstrate, wife-beating was disapproved of, and wife-beaters were viewed as irrational and mad in the seventeenth-century.⁷³

Perhaps more convincingly, the shifts in the construction of femininity where women were increasingly defined as 'naturally' physically weaker, but possessed instead of moral strength, may have affected the way battered wives represented themselves in separation suits. Although numbers are too small to do more than speculate, there is an

⁷⁰ Fletcher, *Gender*, p. 335 and chapter 16. For the theories of changes in ideas about sexual difference see Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge MA, 1990).

⁷¹ She interprets separation suits as showing that men (and their wives) described their violence as rational. *Dangers*, p. 219;

⁷² *Book of Homilies*, pp. 245-7.

⁷³ Wrightson, *English Society*, p. 94. Foyster, 'Male Honour, Social Control & Wife Beating in Late Stuart England', *Transactions of the Royal Historical Society*, Sixth Series, VI (1996), 219-22. Trumbach claims that a 'rational man in eighteenth-century England could behave toward his wife in ways that only madmen behaved toward others'. He fails to back this up with evidence that wife-beaters were so permitted, or even that anyone else shared their opinion. Trumbach, *Sex and the Gender Revolution*, p. 333.

impression that female physical aggression was less often offered as a counter-accusation after the mid-eighteenth-century. With a move towards describing women physically in more passive terms, husbands found it more convincing to depict other forms of female disobliging behaviour. Wives also got more mileage out of displaying themselves as submissive in order to highlight the irrationality of their mad, bad husbands. Indeed, too much female submission was dangerously equated with male tyranny. It should not be forgotten, however, that women's manipulation of the language of weakness and deference was a long-standing element of power relationships.⁷⁴

VI

Establishing the causality of marital conflict has not one of the aims of this study. It is far more worthwhile to reconstruct context, shared attitudes, and even, perhaps, motivation. But studies of marital breakdown do tackle the question of who was blamed for rocky unions. For example, it has been claimed that in the sixteenth- and seventeenth-centuries, 'the conceptualization of disturbed marriages placed the weight of the fault much more squarely on women than on men'.⁷⁵ This contention is especially tendentious because it anachronistically infers that while contemporaries blamed women, wiser late-twentieth-century heads can see that it was men's demands and failings, both ideological and material, which were the real cause of marital discontent. Extending gender past the dubious theory that its sole foundation was sexual morals, and into the world of work, household and domestic economy, gives agency back to women and men. This makes it neither too daring nor naïve to suggest that both sexes were players in their own marital misery. Not just the puppets of an unfair gender order, but reacting to and against the circumstances of life-cycle, social and financial status,

⁷⁴ Sixteenth-century female litigants employed the language of powerlessness as a pleading strategy in the court of requests. Stretton, *Women Waging Law*, pp. 212-3.

⁷⁵ *Dangers*, pp. 230, 211, 270.

and changing ideologies, wives and husbands themselves determined whether they had a quiet or an unquiet life.

APPENDIX:

List of cruelty, adultery, restitution and annulment suits before the ecclesiastical courts at Durham and York.

The date of the case is taken from the earliest cause paper. The cases are listed alphabetically by surname in each of the categories (cruelty, adultery, restitution + annulment). (Miscellaneous and office adultery are listed separately in footnotes with cause paper references where appropriate).

Durham Diocesan Records. University of Durham Library, Palace Green, Archives and Special Collections.

Samples derived by examining all Durham Diocesan Record cause papers from the consistory and dean and chapter's court, contained in 35 boxes. (Durham University Library is currently indexing these records.)

SEPARATION ON THE GROUNDS OF CRUELTY

Allison c. Allison, 1765

Jane Allison against Charles Allison.

Bowes c. Bowes, 1718.

Esther Bowes against Jonathan Bowes.

Bowness c. Bowness, 1745.

Anne Bowness against John Bowness.

Brumley c. Brumley, 1683.

E. G. Brumley against D. G. Baron Brumley.

Eden c. Eden, 1712.

Frances Eden against Robert Eden.

Giles c. Giles, 1744.

Mary Giles against Henry Giles.

Gomeldon c. Gomeldon, 1740.

Began as a restitution suit, Francis Gomeldon against Jane Gomeldon, 1740. Jane then sued Francis for separation in 1742.

Greenwell c. Greenwell, 1773.

Margaret Greenwell against John Greenwell.

Harding c. Harding, 1742.

Elizabeth Harding against Richard Harding.

Knowles c. Knowles, 1740.

Ursula Knowles against William Knowles.

Smith c. Smith, 1743.

Susannah Smith against John Smith.

Walton c. Walton, 1718.
Sarah Walton against John Walton.

Watson c. Watson, 1801.
Ann Watson against Joseph Watson.

Wear c. Wear, 1726.
Catherine Wear against John Wear.

Wright c. Wright, 1745.
Ann Wright against Thomas Wright.

SEPARATION ON THE GROUNDS OF ADULTERY

Smith c. Smith, 1789.
William Smith against Eleanor Smith.

Tindal c. Tindal, 1731.
Robert Tindal against Anne Tindal.

RESTITUTION OF CONJUGAL RIGHTS

Burne c. Burne, 1736.
Elizabeth Burne against Anthony Burne.

Darant c. Darant, 1718.
Mary Darant against Leonard Darant.

Featherstone c. Featherstone, 1776.
Grace Featherstone against Ralph Featherstone.

Ferman c. Ferman, 1801.
Mary Ferman against John Ferman.

Howard c. Howard, 1735.
Elizabeth Howard against Charles Howard.

Miller c. Miller, 1743.
Lois Miller against Thomas Miller.

Potts c. Potts, 1747.
Jane Potts against Robert Potts.

Richardson c. Richardson, 1785.
Judith Richardson against Thomas Richardson.

ANNULMENT

Moone c. Jackson, 1794.
Margaret Moone against Charles Jackson.

Pattison c. Gray, 1788.

Sarah Pattison against John Gray.

Borthwick Institute of Historical Research, York.

Samples derived by examining all cause papers referring to matrimonial and office correction suits between C.P. H/2446-6009 and between C.P. I/1-3122.

Also causes up to 1804 indexed as Cons.C.P. and Chanc.C.P.

All appropriate transmitted suits, indexed in W. J. Shiels, *Ecclesiastical Cause Papers at York: Files Transmitted on Appeal 1500-1883*, York, University of York, 1983.

All appropriate causes from the Dean and Chapter court, indexed in K. M. Longley, *Ecclesiastical Cause Papers at York: Dean and Chapter's Court 1350-1843*, York, University of York, 1980.

SEPARATION ON THE GROUNDS OF CRUELTY

Allenson c. Allenson, 1675, C.P. H/3264

Grace Allenson against Charles Allenson.

Bell c. Bell, 1749, C.P. I/1312

Mary Bell against William Bell.

Bowes c. Bowes, 1737, Trans. C.P.1737/2

Elizabeth Bowes against Thomas Bowes.

Brooke c. Brooke, 1683, C.P. H/3516

Martha Brooke against Timothy Brooke.

Colston c. Colston, 1726, C.P. I/855

Margaret Colston against John Colston.

Currie c. Currie, 1729, Trans. C.P.1730/6

Jane Currie against John Currie.

Day c. Day, 1699, D/C. C.P. 1699/1

Elizabeth Day against Peter Day.

Dobby c. Dobby, 1719, C.P. I/581

Barbara Dobby against Robert Dobby.

Ettrick c. Ettrick, 1765.

All refs: C.P. I/2914; 1438; 1461; 1475-6; 1480; 1495; 1503-6; 1525-6; 1528-33; 1535-6; 1540; 1543; Trans. C.P.1765/4

Catherine Ettrick against William Ettrick. Suit originated at Durham consistory court. Appealed by William to York. Appealed by Catherine to the Court of Delegates. [See DDR for two letters to Peter Bowlby, proctor.]

Finch c. Finch, 1779, Trans. C.P.1779/1

Elizabeth Finch against Samuel Finch. Suit originated in Durham consistory court. Appealed by Elizabeth to York. Also see remaining material in DDR.

Fletcher c. Fletcher, 1687, Trans. C.P. 1688/3

Anne Fletcher against Anthony Fletcher. Suit originated at Durham consistory court. Anthony appealed the suit to York.

Greaves c. Greaves, 1704, C.P. I/88

Jane Greaves against John Greaves.

Halleley c. Halleley, 1707, D/C. C.P. 1707/2

Mary Halleley against John Halleley.

Hollyday c. Hollyday, 1718, C.P. I/461

Elizabeth Hollyday against Walter Hollyday.

Idelle c. Idelle, 1706, C.P. I/154; C.P. I/241; C.P. I/2735.

Elizabeth Idelle against William Idelle. Elizabeth appealed to the Court of Delegates.

Laughton c. Laughton, 1721, C.P. I/631

Elizabeth Laughton against John Laughton.

Lees c. Lees, 1803, Chanc. C.P.1803/3

Margaret Lees against James Lees. The suit originated at Chester consistory court. James appealed to York

Moor c. Moor, 1707, C.P. I/2741

Abigail Moor against Henry Moor.

More c. More, 1719, C.P. I/699

Anne More against Zachariah More.

Mould c. Mould, 1709, C.P. I/542

Anne Mould against Edward Mould.

Pighells c. Pighells, 1697, C.P. H/4505

Elizabeth Pighells against John Pighells.

Rogers c. Rogers, 1793, C.P. I/2305

Betty Rogers against William Rogers.

Rowsby c. Rowsby, 1692, C.P. H/4283; C.P. H/5977.

Elizabeth Rowsby against William Rowsby.

Shafto c. Shafto, 1797, Trans. C.P.1798/1; D/C. C.P.1798/3.

Lady Mary Shafto against Sir Cuthbert Shafto. Originated in York Dean and Chapter Court. Sir Cuthbert appealed to York Chancery.

Shaw c. Shaw, 1696, Trans. C.P. 1697/2; D/C. C.P. 1696/3.

Anne Shaw against Robert Shaw. Cause originated in York Dean and Chapter court. Robert appealed to the Chancery court.

Smithson c. Smithson, 1680, C.P. H/3469
Lady Mary Smithson against Sir Jerome Smithson.

Spence c. Spence, 1782, C.P. I/2013
Elizabeth Spence against Francis Spence.

Stradling c. Stradling, 1713, C.P. I/291
Elizabeth Stradling against Thomas Stradling.

Walker c. Walker, 1723, C.P. I/812
Margaret Walker against Joseph Walker.

Warburton c. Warburton, 1799, Cons. C.P.1800/3; C.P. I/2503.
Catherine Warburton against Robert Warburton.

Wharrey c. Wharrey, 1720, D/C. C.P.1720/7
Hannah Wharrey against Edward Wharrey.

Whatmore c. Whatmore, 1788, C.P. I/2221
Rebecca Whatmore against Charles Whatmore.

SEPARATION ON THE GROUNDS OF ADULTERY

Agar c. Agar, 1773, C.P. I/1647
William Agar against Elizabeth Agar.

Barttelot c. Barttelot, 1793, C.P. I/2366
Hooker Barttelot against Amelia Barttelot. Amelia appealed to the Court of Delegates.

Carr c. Carr, 1800, Cons. C.P.1800/1; C.P. I/2569-2571.
John Carr against Sarah Carr.

Chaworth c. Chaworth, 1760, C.P. I/1414
William Chaworth against Alice Chaworth.

Cunliffe c. Cunliffe, 1701, C.P. I/54
John Cunliffe against Dorothy Cunliffe. Dorothy appealed to the Court of Delegates.

Dent c. Dent, 1722, C.P. I/697
John Dent against Elizabeth Dent.

Greenwood c. Greenwood, 1796, C.P. I/2486
John Greenwood against Mary Greenwood.

Holyman c. Holyman, 1730, Trans. C.P.1732/4
Robert Holyman against Jane Holyman. Suit originated at Chester consistory court.
Appealed by Jane to York.

Manwaring c. Manwaring, 1761, Trans. C.P.1766/2
Roger Manwaring against Mary Manwaring. Suit originated at Chester consistory court.
Appealed by Robert to York.

Markham c. Markham, 1802, Cons. C.P.1802/5
George Markham against Elizabeth Markham.

Mitchinson c. Mitchinson, 1775, C.P. I/1710
William Mitchinson against Eleanor Mitchinson.

Searidson c. Searidson, 1785, C.P. I/1975
Elizabeth Searidson against Joseph Searidson.

Shafte c. Shafte, 1800, C.P. I/2568
Hester Shafte against George Shafte. Originated at Chester consistory court. Suit
appealed by George to York.

Siddall c. Siddall, 1707, C.P. I/2759
Emmanuel Siddall against Sarah Siddall.

Silvester c. Silvester, 1675, C.P. H/4729-30; C.P. H/4737; C.P. H/4740.
Edward Silvester against Anne Silvester.

Spink c. Spink, 1804, Cons. C.P.1804/5
Thomas Spink against Ann Spink.

Stapylton c. Stapylton, 1786, Various cause papers, C.P. I/2245-75.
Martin Stapylton against Henrietta Maria Stapylton.

Surtees c. Surtees, 1745, Trans. C.P.1748/1
George Surtees against Elizabeth Surtees. Originated at Durham consistory court.
Appealed by Elizabeth.

Taylor c. Taylor, 1776, C.P. I/1817
John Taylor against Ann Taylor.

Vavasour c. Vavasour, 1715, C.P. I/458; C.P. I/661-2.
Sir Peter Vavasour against Lady Jane Vavasour.

Wentworth c. Wentworth, 1756, C.P. I/1376
Godfrey Wentworth against Dorothea Wentworth.

RESTITUTION OF CONJUGAL RIGHTS

Bethell [?] c. *Bethell*, 1665, C.P. H/2568
Christabel Rogers [sic.] against Walter Bethell. Appealed by Walter to King's Chancery.

Blake c. Blake, 1775, D/C. C.P.1775/1
Ann Blake against John Blake.

Currer c. Currer, 1673, C.P. H/3230; C.P. H/4662.
Henry Currer against Jane Currer.

Isaacson c. Isaacson, 1776, Trans. C.P. 1777/2
Mary Isaacson against John Isaacson. John appealed to York and to the Court of Delegates. Some documents and a range of correspondence are contained in DDR.

Goddard als. Gawthorne c. Goddard als. Gawthorne, 1716, C.P. I/377
Sarah Gawthorne against Thomas Gawthorne.

Leighton c. Leighton, 1770, C.P. I/573; C.P. I/1691; Trans. C.P.1773/3.
Margaret Leighton against John Leighton and Ann Grainger (whom he had married). Suit originated at Durham consistory court. John and Ann appealed to York. Several of the original documents are contained in the DDR.

Northend c. Northend, 1702, C.P. I/3; C.P. I/164.
Hannah Northend against Robert Northend. Robert appealed to the Court of Delegates.

Ottie/Ottey als. Awtie/Awtey c. Ottie/Ottey als. Awtie/Awtey, 1685, C.P. H/5734; D/C. C.P.1685/8.
Elizabeth Ottie against Daniel Ottie.

Raynor c. Raynor, 1675, C.P. H/2936-7.
Anne Raynor against Thomas Raynor.

Robson c. Robson, 1700, C.P. I/51
Anne Robson against Ebenezer Robson.

Sayer c. Sayer, 1711, C.P. I/291; C.P. I/187.
Arthur Sayer against Margaret Sayer.

Starkey c. Starkey, 1663, Trans. C.P.1665/2
Ann Massam [sic.] against Edward Starkey. Suit originated at Chester consistory court and was appealed by Edward.

Turner c. Turner, 1699, Trans. C.P.1700/2
Sarah Turner against Thomas Turner. Suit originated at Chester consistory court. Appealed by Thomas to York.

Wilkinson c. Wilkinson, 1727, C.P. I/862
Mary Wilkinson against John Wilkinson.

Wood c. Wood, 1708, Trans. C.P.1709/2
Jane Wood against Thomas Wood. Suit originated at Durham consistory court. Appealed by Thomas to York.

ANNULMENT

Bunbury c. Davies, 1667, Trans. C.P. 1667/2

Henry and William Bunbury [uncles of Henry Davies] against Henry and Margaret Davies. Suit originated at Chester consistory court. Henry and Margaret appealed to York.

Cutler c. Cutler, 1795, Cons. C.P.1801/4

Hannah Cutler against James Cutler.

Hartwell c. Hartwell, 1720, C.P. I/619-20.

Christiana Hartwell against Denby Hartwell.

Knipe c. Roskell, 1708, C.P. I/258

Elizabeth Knipe against Robert Roskell. Appealed by Robert to York and then to the Court of Delegates.

Lowey c. Cashin Jnr., 1746, Trans. C.P.1752/1

Isabel Lowey against William Cashin. Originated at Bishop's Court, Man. Appealed by Isabel to York.

Mossock c. Lofthouse als. Stoppe als. Mossock, exact date unknown, C.P. H/5846

Thomas Mossock against Frances Mossock.

Overend c. Bailey, 1768, Trans. C.P.1769/1

William Overend against Mary Bailey. Originated at Archdeacon's court of Richmond and appealed by William to York.

Perkins c. Allen als. Perkins, 1777, C.P. I/2984

Richard Perkins [father of Richard Perkins the younger] against Frances Allen.

Tireman c. Tireman, 1702, C.P. I/169

Elizabeth Tireman against Samuel Tireman.

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